IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11 (Subchapter V)
Recombinetics, Inc., *et al.*,	Case No. 24-12593 (___)
Debtors.[1]	(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING; (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; (III) AUTHORIZING THE USE OF CASH COLLATERAL; (IV) GRANTING ADEQUATE PROTECTION; (V) MODIFYING THE AUTOMATIC STAY; (VI) SCHEDULING A FINAL HEARING; AND (VII) GRANTING RELATED RELIEF

Recombinetics, Inc. and its above-captioned affiliates (collectively, the "Debtors"), the debtors and debtors in possession in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), hereby file this *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing; (II) Grant Liens and Providing Superpriority Administrative Expenses Status; (III) Authorizing the Use of Cash Collateral; (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing; and (VII) Granting Related Relief*. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Rocco Morelli in Support of Debtors' Chapter 11 Petitions and First Day Motions and Applications* (the "First Day Declaration"). In further support of this Motion, the Debtors respectfully state as follows:

[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.

SUMMARY OF RELIEF REQUESTED

1. Pursuant to sections 105, 361, 362, 363, 364, 503, 506(c), 507, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1, 4001-2, and 9013-1 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 seek entry of an interim order, in substantially the form attached hereto as **Exhibit A** (the "Interim DIP Order"), and a final order to be submitted at a later date (the "Final DIP Order" and, together with the Interim DIP Order, the "DIP Orders"):

- authorizing the Debtors to obtain postpetition financing ("DIP Financing") pursuant to a senior, secured, superpriority, debtor in possession loan facility (the "DIP Facility") subject to the terms and conditions set forth in the Interim DIP Order and that certain Superpriority Debtor in Possession Loan and Security Agreement, in substantially the form attached hereto as **Exhibit B** (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "DIP Credit Agreement"), by and among the Debtors and TOG Technologies, LLC ("TOG") or its designee (the "DIP Lender"), consisting of (i) new money term loans in an aggregate principal amount of up to approximately $1,838,757.56, of which approximately $1,298,757.56 will be available upon entry of the Interim DIP Order, subject to the initial DIP Budget (attached hereto as **Exhibit C**, the "Initial DIP Budget" and, together with any subsequently approved budget, the "DIP Budget"), and $540,000 will be available upon the entry of the Final DIP Order, and (ii) approximately $1,820,877.95 of DIP Roll-Up Loans (as defined below) to roll up and convert in full the Prepetition Bridge Loan Obligations (as defined below) into DIP Obligations (as defined below), which roll up and conversion will be deemed to occur upon entry of the Interim DIP Order (the loans to be made available under the foregoing clauses (i) and (ii), the "DIP Loans" and the commitments therefor, the "DIP Commitments").

- authorizing the Debtors to incur the DIP Loans and all extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees, exit fees, or premiums, and other fees), costs, expenses and other liabilities and obligations (including indemnities and similar obligations, whether contingent or absolute) due or payable under the DIP Documents (as defined below) (collectively, the "DIP Obligations").

- authorizing the Debtors to execute, deliver and perform under the DIP Credit Agreement and all other documents and instruments that may be reasonably necessary or appropriate in connection with the DIP Facility (in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof, together with the DIP Credit Agreement, the "DIP Documents").

- subject to the Carve-Out (as defined below), granting to the DIP Lender allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code.

- granting to the DIP Lender valid, enforceable, non-avoidable and automatically perfected liens pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code on the DIP Collateral (as defined below), on the terms described herein, and, for the avoidance of doubt, subject to the Carve Out.

- authorizing the DIP Lender to take all commercially reasonable actions to implement the terms of the Interim DIP Order.

- waiving, without prejudice to the Final DIP Order, (a) the Debtors' right to surcharge the Prepetition Collateral (as defined below) and the DIP Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code and (b) any "equities of the case" exception under section 552(b) of the Bankruptcy Code.

- waiving the equitable doctrine of "marshaling" and other similar doctrines (a) with respect to the DIP Collateral for the benefit of any party other than the DIP Lender and (b) with respect to the Prepetition Collateral (including all property constituting "cash collateral," as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral")) for the benefit of any party other than the Prepetition Secured Lender (as defined below).

- authorizing the Debtors to use proceeds of the DIP Facility and Cash Collateral (as defined below) in accordance with the DIP Orders and the DIP Documents.

- authorizing the Debtors to pay the DIP Obligations as they become due and payable in accordance with the DIP Documents.

- subject to the restrictions set forth in the DIP Documents and the DIP Orders, authorizing the Debtors to use Prepetition Collateral (including Cash Collateral) and provide adequate protection, as and to the extent set forth herein, to the Prepetition Secured Lender for any diminution in value of its interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date (any such diminution, "Diminution in Value").

- vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the DIP Lender to implement and effectuate the terms and provisions of the DIP Orders and the DIP Documents.

- waiving any applicable stay (including under Bankruptcy Rule 6004(h)) and providing for immediate effectiveness of the Interim DIP Order.

- scheduling a final hearing (the "Final Hearing") to consider final approval of the DIP Facility on the terms of the Final DIP Order.
- granting the Debtors such other and further relief as is just and proper.

JURISDICTION AND VENUE

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

3. The statutory and legal predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 503, 506(c), 507, and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Rule 2002-1, 4001-2, and 9013-1.

BACKGROUND

A. General Background.

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

[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.

5. 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.

6. 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.

B. Prepetition Secured Debt

(i) Prepetition Bridge Loan

7. On October 3, 2024, pursuant to that certain Loan and Security Agreement (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "Prepetition Rescue Financing Credit Agreement" and, collectively with the other "Loan Documents" (as defined in the Prepetition Rescue Financing Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the "Prepetition Loan Documents"), by and among (a) Debtor Recombinetics, Inc. ("Recombinetics") and (b) Debtor Acceligen, Inc., as borrowers (together with Recombinetics, the "Prepetition Loan Parties") and (c) TOG, as successor to URUS Group, LP, a Delaware limited partnership ("URUS," together with TOG and its successors and assigns, the "Prepetition Secured Lender"), the Prepetition Loan Parties incurred "Obligations" (as defined in the Prepetition Rescue Financing

Credit Agreement, the "Prepetition Bridge Loan Obligations") to the Prepetition Secured Lender on a joint and several basis.

8. The Prepetition Rescue Financing Credit Agreement was entered into to provide the Prepetition Loan Parties with approximately $485,000 (net of fees) of rescue financing to fund working capital in anticipation of the commencement of these Chapter 11 Cases (the "Prepetition Rescue Financing").

9. On October 28, 2024, pursuant to the First Amendment to the Prepetition Rescue Financing Credit Agreement, URUS (the original lender) assigned all of its rights and obligations under the Prepetition Rescue Financing Credit Agreement to TOG, and TOG agreed to provide an additional $1,229,100 to finance the Prepetition Loan Parties' legal and other expenses in connection with the filing of these Chapter 11 Cases.

10. As of the Petition Date, the Prepetition Loan Parties were indebted and liable to the Prepetition Secured Lender in the aggregate principal amount of not less than $1,747,900, plus accrued and unpaid interest thereon and fees, expenses, costs, charges, and indemnities in connection therewith.

11. As security for the Prepetition Bridge Loan Obligations, the Prepetition Loan Parties granted the Prepetition Secured Lender a security interest in and continuing lien on substantially all of their respective assets and property, including Cash Collateral (collectively, the "Prepetition Collateral" and the liens on and security interests in the Prepetition Collateral, the "Prepetition Secured Lender Liens"), and subject and subordinate only to the Permitted Liens defined in the Prepetition Rescue Financing Credit Agreement (collectively, the "Prepetition Permitted Liens").

(ii) Secured Convertible Note Financing

12. On August 15, 2024, Recombinetics issued investor Timothy Clarkson ("Mr. Clarkson") a convertible promissory (the "Clarkson Note") under the terms of that certain Bridge Loan and Security Agreement, dated as of August 15, 2024, by and between Mr. Clarkson and Recombinetics. The Clarkson Note bears interest at the rate of 10% per annum, matures on December 31, 2024, and is secured (subject to certain exceptions) by a security interest in substantially all of the assets of Recombinetics (such security interest, the "Clarkson Liens").

13. As of the Petition Date, $200,000 in principal is outstanding on the Clarkson Note.

14. Mr. Clarkson has consented to the terms of the DIP Financing and DIP Orders, including the DIP Priming Liens, the granting of adequate protection to the Prepetition Secured Lender, and the subordination of the Clarkson Liens to the Prepetition Secured Lender Liens, each as more fully described below.

C. Proposed DIP Financing

15. The Debtors have limited liquidity to continue operating in the ordinary course and to cover ongoing administrative expenses. To proceed with their proposed sale process and maintain administrative solvency, the Debtors require immediate debtor-in-possession financing and access to Cash Collateral. Without access to Cash Collateral and the funds available through the DIP Financing, the Debtors would be unable to sustain operations, pay employees, or meet obligations to critical vendors.

16. In light of these circumstances, the Debtors engaged in negotiations with the DIP Lender to establish an 8-week cash flow budget ("DIP Budget") and sale timeline that would secure the DIP Lender's commitment to finance these Chapter 11 Cases. After substantial negotiations, the Debtors and DIP Lender reached an agreement on the terms of the DIP Financing

and the consensual use of Cash Collateral. The Debtors believe the financing provided under the DIP Financing, combined with access to Cash Collateral, will ensure adequate liquidity on reasonable, market terms to cover accruing administrative expenses throughout these Chapter 11 Cases, supporting the Debtors' pursuit of a sale of substantially all of their assets.

D. Material Terms of DIP Financing

17. Pursuant to Bankruptcy Rule 4001(b), (c), and (d) and Local Rule 4001-2, the following is a concise statement and summary of the material terms of the DIP Facility and Interim DIP Order.

Summary of Material Terms		
Borrowers *Bankruptcy Rule* 4001(c)(1)(B)	Debtors Recombinetics, Inc., Acceligen, Inc., Regenevida, Inc., Surrogen, Inc., and Therillume, Inc.	DIP Credit Agreement, Introductory ¶
DIP Lender *Bankruptcy Rule* 4001(c)(1)(B)	TOG Technologies, LLC	DIP Credit Agreement, Introductory ¶
Borrowing Commitment *Bankruptcy Rule* 4001(c)(1)(B) *Local Rule* 4001-2(a)(i)(A)	The DIP Commitments consisting of (a) of approximately $1,838,757.56 in aggregate principal amount of new money term loans (the "New Money Delayed Draw Commitment"), of which approximately $1,298,757.56 will be available upon entry of the Interim DIP Order, and $540,000 will be available upon entry of the Final DIP Order, (b) approximately $1,820,877.95 of DIP Roll-Up Loans to roll up and convert, on a dollar-for-dollar basis, Prepetition Obligations under the Prepetition Rescue Financing Agreement.	DIP Credit Agreement § 2.1
Maturity and Termination *Bankruptcy Rule* 4001(c)(1)(B) *Local Rule* 4001-2(a)(i)	All Obligations of the Debtors under the DIP Credit Agreement will be due on the earliest of: (a) January 3, 2024, (b) the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code or otherwise, (c) the effective date of a Chapter 11 Plan, and (d) the date of termination of the Lender's Commitments and the acceleration of any outstanding extensions of credit upon an Event of Default. Upon the occurrence of an Event of Default, the DIP Lender may deliver a Termination Declaration, terminating any commitment of the DIP Lender to extend credit to the Debtors under the DIP Facility.	DIP Credit §§ 1.1(78), 2.2, 2.3(3), 8.1–8.20 & 9.1 Interim DIP Order ¶¶ 4, 20(a) & 21

Summary of Material Terms		
Restrictions on Use of Proceeds *Bankruptcy Rule* 4001(c)(1)(B) *Local Rule* 4001-2(a)(i)	The proceeds of the DIP Loans may only be used (i) to pay fees and expenses incurred in connection with the DIP Credit Agreement, the Chapter 11 Cases, and related transactions, (ii) to pay approved Prepetition Obligations in accordance with the DIP Budget, (iii) for working capital and general corporate purposes of the Debtors in accordance with the DIP Budget, and (iv) with respect to the New Money Initial Term Loan, a portion thereof may be deposited in certain restricted deposit accounts of any Borrower to refund amounts used for payroll and benefits, not to exceed the amounts set forth in week 1 of the DIP Budget delivered on the Effective Date for such expenses.	DIP Credit Agreement § 2.7
Interest Rate *Bankruptcy Rule* 4001(c)(1)(B) *Local Rule* 4001-2(a)(i)(B)	The DIP Loans (including any amounts added to principal under the DIP Documents) shall bear interest at the rate of 13.00% per annum (the "Contract Rate"). Upon the occurrence and during the continuance of an Event of Default, or if any DIP Obligations are outstanding after the Maturity Date, the DIP Obligations shall automatically bear interest at the lesser of (a) the maximum interest rate allowed by Applicable Law, and (b) 2.00% per annum in excess of the Contract Rate.	DIP Credit Agreement § 2.4
Fees and Expenses *Bankruptcy Rule* 4001(c)(1)(B) *Local Rule* 4001-2(a)(i)(B), (K)	*Commitment Fee*. The DIP Lender will be entitled to a non-refundable commitment fee equal to two percent (2.0%) of the DIP Commitments, which fee will be fully earned and due and payable in full on the Effective Date. The DIP Lender intends to "net fund" the commitment fee by withholding proceeds equal to the commitment fee from the amount of new money term loans advanced to the Debtors on the Effective Date. *Exit Fee*. The DIP Lender will be entitled to an exit fee equal to two percent (2.0%) of the aggregate principal amount of the DIP Loans, which fee will be fully earned on the Effective Date and due and payable in a ratable amount on any date the DIP Loans are repaid, prepaid, or otherwise paid for any reason.	Fee Letter, **Exhibit D**.
Provisions Limiting Court's Power or Discretion to Enter Future Orders *Local Rule* 4001-2(a)(i)(C)	Not applicable.	
Provisions Providing for Funding of Non-Debtor Affiliates *Local Rule* 4001-2(a)(i)(D)	Not Applicable.	
Material Conditions to Closing and Borrowing, Including Budgets	• Entry into the Fee Letter. • Delivery of the Initial DIP Budget.	Credit Agreement, Art. 3

Summary of Material Terms		
Bankruptcy Rule 4001(c)(1)(B) *Local Rule* 4001-2(a)(i)(E)	• Filing of appropriate financing statements as may be determined as necessary by the DIP Lender to perfect the security interests granted under the DIP Credit Agreement. • Execution of the Asset Purchase Agreement. • The representations and warranties of the Debtors under the DIP Documents shall be true and correct in all material respects as of the entry of the Interim DIP Order (or in the case of representations and warranties with a "materiality" qualifier, true and correct in all respects). • Except for the Chapter 11 Cases, no presently pending unstayed suit, action, proceeding or investigation against the Debtors that (i) could reasonably be expected to have a Material Adverse Effect, or (ii) pertains to the DIP Credit Agreement, the Prepetition Rescue Financing Credit Agreement or the financing contemplated thereby. • The Debtors shall have paid all fees, costs, and expenses incurred by the DIP Lender in connection with the negotiation, execution and delivery of the DIP Documents. • The DIP Loan shall not be prohibited by any applicable law of any Governmental Authority. • Since the Petition Date, other than those resulting from the commencement of the Cases, no event shall have occurred or failed to occur that could be expected to have a Material Adverse Effect. • All "first day orders" intended to be entered at or immediately after the "first day" hearing (including a cash management order shall have been entered by the Court. • The Interim DIP Order (i) shall have been entered, and (ii) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of the DIP Lender in its sole discretion; and, if the Interim DIP Order is the subject of a pending appeal in any respect, neither the DIP Loans, nor the performance by the Debtors of any of their respective obligations under the DIP Credit Agreement, under the other DIP Documents or under any other instrument or agreement referred to therein shall be the subject of a presently effective stay pending appeal. • All motions, orders (including the "first day" orders) and other documents to be filed with and submitted to the Court on the Petition Date shall be in form and substance reasonably satisfactory to the DIP Lender. • No unstayed action, suit, investigation or other proceeding by or before any arbitrator or any Governmental Authority shall be threatened in writing or pending (other than the Chapter 11 Cases) and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with the DIP Credit Agreement, any other DIP	

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<tr><td></td><td>Document, or any transaction contemplated thereby or (ii) which could be expected to result in a Material Adverse Effect, including, in each case, any proceedings challenging the DIP Credit Agreement or the DIP Orders.

And prior to the making of any DIP Loan on or after the date of entry of the Final DIP Order:

• DIP Lender's receipt of a Request for Loan

• The representations and warranties of the Debtors under the DIP Documents shall be true and correct in all material respects as of the entry of the Final DIP Order (or in the case of representations and warranties with a "materiality" qualifier, true and correct in all respects)

• The Final DIP Order (i) shall have been entered on or before the date that is twenty-eight (28) days after the Petition Date and (ii) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of Lender in its sole discretion; and, if the Final DIP Order is the subject of a pending appeal in any respect, the performance by the Debtors of any of their respective obligations hereunder, under the other DIP Documents or under any other instrument or agreement referred to therein shall not be the subject of a presently effective stay pending appeal.

• All motions, orders and other documents to be filed with and submitted to the Court in connection with the DIP Documents shall be in form and substance reasonably satisfactory to the DIP Lender

• Except for the Chapter 11 Cases, no unstayed action, suit, investigation or other proceeding by or before any arbitrator or any Governmental Authority shall be threatened in writing or pending and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with the DIP Credit Agreement, any other DIP Document, or any transaction contemplated thereby, or (ii) which could be expected to result in a Material Adverse Effect, including, in each case, any proceedings challenging the DIP Credit Agreement or the DIP Orders or any part thereof.

• Use of the proceeds from the DIP Loans shall be in compliance with the DIP Budget</td><td></td></tr>
<tr><td><u>Carve Out</u>

Bankruptcy Rule 4001(b)(1)(B)(iii)

Local Rule 4001-2(a)(i)(F)</td><td>"<u>Carve-Out</u>" means the following expenses: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) (without regard to the notice set forth in (iii) below); (ii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred by persons or firms retained by the Debtors pursuant to section 327 or 328 of the Bankruptcy Code (the "<u>Debtor Professionals</u>," and such fees the</td><td>Interim DIP Order ⁋ 4.</td></tr>
</table>

Summary of Material Terms		
	"Allowed Debtor Professional Fees") at any time before or on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of such Carve Out Trigger Notice, provided, that the aggregate amount of such Allowed Debtor Professional Fees included in the Carve-Out shall be the lesser of (x) the budgeted amount of Allowed Debtor Professional Fees in the DIP Budget for the Pre-Trigger Date Period and (y) the actual Allowed Debtor Professional Fees incurred during the Pre-Trigger Date Period less the sum of all Allowed Debtor Professional Fees incurred during the Pre-Trigger Date Period and paid at any time and any retainers held by any Debtor Professionals; and (iii) Allowed Debtor Professional Fees not to exceed $25,000, in the aggregate, incurred after the first business day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise	
Priority and Security *Bankruptcy Rule* 4001(c)(1)(B)(i), 4001(c)(1)(B)(ii) *Local Rule* 4001-2(a)(i)(G), (N), (P), (U)	*Superpriority Claims*. Subject to the Carve-Out, the DIP Obligations will constitute allowed superpriority administrative expense claims (the "DIP Superpriority Claims") against the Debtors on a joint and several basis with priority over any and all claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations (as defined below)), payable from, and having recourse to, all prepetition and postpetition property of the Debtors and all proceeds thereof, including proceeds or property recovered as a result of any claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code, but excluding the Debtor Professional Fee Escrow Account and amounts held therein other than the Debtors' reversionary interest therein. The DIP Superpriority Claims will be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event the Interim DIP Order or any provision thereof is vacated, reversed or modified, on appeal or otherwise. *DIP Liens*. As security for the DIP Obligations, the DIP Lender will be granted the following liens (collectively, the "DIP Liens"): • *Liens on Unencumbered Assets*. Pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority lien on and security interest in (subject to the Carve-Out) all tangible and intangible prepetition and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to a Prepetition Permitted Lien, other than the Debtor Professional Fee Escrow Account.	Interim DIP Order ¶¶ 5 & 6

Summary of Material Terms		
	• *Priming Liens*. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest (subject to the Carve-Out) in, and lien upon, all tangible and intangible prepetition and postpetition property of the Debtors of the same nature, scope, and type as the Prepetition Collateral, regardless of where located (the "DIP Priming Liens"). The DIP Priming Liens shall be (A) senior in all respects to the Prepetition Secured Lender Liens and Clarkson Liens on the Prepetition Collateral, (B) senior to any Adequate Protection Liens on the Collateral, and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. The Prepetition Secured Lender Liens and Clarkson Liens with respect to the Prepetition Collateral shall be primed by and made subject and subordinate to the DIP Priming Liens. • *Junior Liens*. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all tangible and intangible prepetition and postpetition property of the Debtors that, on or as of the Petition Date, is subject to any Prepetition Permitted Liens, which shall be immediately junior and subordinate to any such Prepetition Permitted Liens (other than the Clarkson Liens).	
Adequate Protection *Bankruptcy Rules* 4001(b)(l)(B)(iv), 4001(c)(1)(B)(ii) *Local Rule* 4001-2(a)(i)(B), 4001-2(a)(i)(K), (N), (P)	As adequate protection of the Prepetition Secured Lender's interests in the Prepetition Collateral (including Cash Collateral), for the aggregate Diminution in Value and as an inducement to consent to the priming of the Prepetition Secured Lender Liens, the use of its Cash Collateral, and the imposition of the Carve-Out, the Prepetition Secured Lender will be granted, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, the following (collectively, the "Adequate Protection Obligations") with respect to any Prepetition Bridge Loan Obligations that are not rolled up and converted on an irrevocable basis into DIP Obligations or indefeasibly paid in full (whether in cash, credit bid by the Prepetition Secured Lender, or otherwise in accordance with the terms of the Prepetition Loan Documents) and are no longer subject to Challenge: • *Adequate Protection Liens*. A valid, perfected replacement security interest in and lien on account of the Prepetition Secured Lender's Diminution in Value upon all of the DIP Collateral, subject and subordinate to (A) the DIP Liens, (B) the Prepetition Permitted Liens (other than the Clarkson Liens), and (C) the Carve-Out. • *Superpriority Claim*. an allowed superpriority administrative expense claim against the Debtors on a joint and several basis on account of the Prepetition Secured Lender's Diminution in Value under section	Interim DIP Order ⁋ 12

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<tr><th colspan="3">Summary of Material Terms</th></tr>
<tr><td></td><td>507(b) of the Bankruptcy Code (the "Adequate Protection Superpriority Claim") which Adequate Protection Superpriority Claim will be payable from and have recourse to all DIP Collateral and all proceeds thereof. The Adequate Protection Superpriority Claim will be subject and subordinate only to (i) the Carve-Out and (ii) the DIP Superpriority Claims.

• *Fees and Expenses*. All reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the Prepetition Secured Lender's advisors, including, without limitation, those of Morgan, Lewis & Bockius LLP (collectively, the "Adequate Protection Fees and Expenses"), subject (with regard to any fees incurred after the Petition Date) to the review procedures set forth in paragraph 2(c)(iv) of the Interim DIP Order, which Adequate Protection Fees and Expenses shall accrue and be payable on the Maturity Date at the Default Rate (as defined in the Prepetition Rescue Financing Credit Agreement as in effect on the Petition Date).

• *Interest Payments*. Cash payments during the Chapter 11 Cases of all accrued interest on the outstanding Prepetition Bridge Loan Obligations payable on the Maturity Date at the Default Rate (as defined in the Prepetition Rescue Financing Credit Agreement as in effect on the Petition Date)</td><td></td></tr>
<tr><td>Milestones

Bankruptcy Rule 4001(c)(1)(B)(vi)

Local Rule 4001-2(a)(i)(H)</td><td>The Debtors have agreed to the following milestones:

(i) No later than three (3) business days after the Petition Date, entry by the Court of the Interim DIP Order;

(ii) No later than ten (10) calendar days after the Petition Date, entry by the Court of an order approving the Asset Purchase Agreement and the Bidding Procedures (as defined in the DIP Credit Agreement) for the Purchased Assets.

(iii) No later than twenty-five (25) calendar days after the Petition Date, entry by the Court of the Final Order;

(iv) No later than December 11, 2024, the submission deadline for all bids for the sale of the Purchased Assets as set forth in the Bidding Procedures;

(v) No later than December 13, 2024, holding an auction (if necessary) for the sale of the Purchased Assets as set forth in the Bidding Procedures;

(vi) No later than December 20, 2024, entry by the Court of the Sale Order (as defined in the Asset Purchase Agreement); and

(vii) No later than January 2, 2025, consummation of the sale of Purchased Assets.</td><td>DIP Credit Agreement § 7.9(3)

Interim DIP Order ⁋ 20(b)</td></tr>
</table>

Summary of Material Terms		
Prepayment *Local Rule* 4001-2(a)(i)(I)	The DIP Loans may be prepaid, in whole at any time, or in any part from time to time, without premium or penalty. The DIP Loans must be prepaid in the amounts and at the times specified in subsections (1)–(5) of Section 2.8 of the DIP Credit Agreement.	DIP Credit Agreement § 2.8
Provisions Governing Joint Liability *Local Rule* 4001-2(a)(i)(J)	The Debtors will be jointly and severally liable for the DIP Obligations.	Interim DIP Order § 3
Provisions Requiring Debtors to Pay Lender's Expenses and Attorneys' Fees Without Notice or Review *Local Rule* 4001-2(a)(i)(K)	The Interim DIP Order includes the following provision: "[W]ithout further approval of th[e] Court, each Debtor is authorized and directed . . . to pay all fees, expenses, and indemnities in connection with or that may be reasonable required, necessary, or desirable in connection with the DIP Financing, including, without limitation: . . . (iv) to pay the fees, costs and expenses incurred, whether before or after the Petition Date, by professionals retained by the Prepetition Secured Lender or DIP Lender, including Morgan, Lewis & Bockius LLP, in connection with the Prepetition Rescue Financing or DIP Facility (the "Lender Professional Fees") . . . ." All post-petition Lender Professional Fees are subject to a 10-day review period.	Interim DIP Order ⁋ 2(c)(iv)
Provisions Prohibiting Use of Estate Funds to Investigate Liens and Claims of Prepetition Lenders *Local Rule* 4001-2(a)(i)(L)	The Interim DIP Order includes the following provision: "[N]o DIP Loans, DIP Collateral, Prepetition Collateral (including Cash Collateral) or any portion of the Carve-Out, may be used directly or indirectly, including without limitation through reimbursement of professional fees, in connection with (a) the investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against the DIP Lender, or the Prepetition Secured Lender, or their respective Representatives (in their capacities as such), or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Bridge Loan Obligations, Adequate Protection Liens, or Adequate Protection Superpriority Claims or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the Prepetition Bridge Loan Obligations and/or liens, claims, rights, or security interests securing or supporting the DIP Obligations granted under the DIP Orders, the DIP Documents or the Prepetition Loan Documents in respect of the Prepetition Bridge Loan Obligations, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law;	Interim DIP Order ⁋ 26

Summary of Material Terms		
	(b) attempts to prevent, hinder, or otherwise delay or interfere with the Prepetition Secured Lender's or the DIP Lender's, as applicable, enforcement or realization on the Prepetition Bridge Loan Obligations, Prepetition Collateral, DIP Obligations, DIP Collateral, as applicable, and the liens, claims and rights granted to such parties under the DIP Orders; (c) attempts to seek to modify any of the rights and remedies granted to the Prepetition Secured Lender or the DIP Lender under the Interim DIP Order, the Prepetition Loan Documents or the DIP Documents, as applicable, other than in accordance with this Interim Order; (d) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens and claims permitted by the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and Adequate Protection Superpriority Claims; or (e) to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are authorized by the Court, agreed to in writing by the DIP Lender, expressly permitted under this Interim Order or under the DIP Documents (including the DIP Budget, subject to permitted variances), in each case unless all DIP Obligations, Prepetition Bridge Loan Obligations, Adequate Protection Obligations, and claims granted to the DIP Lender and Prepetition Secured Lender under this Interim Order, have been paid in full in cash or otherwise agreed to in writing by the DIP Lender and the Prepetition Secured Lender, as applicable."	
Events of Default *Bankruptcy Rule* 4001(c)(1)(B) *Local Rule* 4001-2(a)(i)(M)	The DIP Credit Agreement contains customary events of default for financings of this type.	DIP Credit Agreement, Art. 8
"Roll-Up" Provisions *Local Rule* 4001- 2(a)(i)(O)	The Interim DIP Order provides for the dollar-for-dollar roll up of the Prepetition Bridge Loan Obligations into DIP Obligations.	Interim DIP Order ¶ J
Provisions or Findings of Fact (i) Binding Estate or Parties in Interest w/r/t Validity, Perfection, or Amount of Prepetition Liens or the Waiver of Claims Against the Secured	Not Applicable. The Interim DIP Order contains provisions that bind the Debtors with respect to the validity, perfection, and amount of the Prepetition Bridge Loan Obligations. However, the acknowledgements and stipulations are subject to the challenge rights contained in paragraph 26 of the Interim DIP Order. Paragraph 26 provides that any Challenge Claim shall be filed with the Court within seventy-five (75) days from the date of entry of the Interim DIP Order.	Interim DIP Order ¶¶ F, 25

Summary of Material Terms		
Creditor Without Giving Parties in Interest at Least Seventy-Five (75) Days from the Entry of the Initial Interim Order to Investigate Such Matters *Bankruptcy Rule* 4001(c)(1)(B)(viii) *Local Rule* 4001-2(a)(i)(Q)		
Provisions Immediately Approving All Terms and Conditions of the Credit Agreement *Local Rule* 4001-2(a)(i)(R)	Not Applicable. The Interim DIP Order authorizes the Debtors to enter into the DIP Credit Agreement and other DIP Loan Documents on an interim basis.	Interim DIP Order ⁋ 2
Waivers/ Modification of Automatic Stay and Provisions Allowing Lenders to Enforce Remedies Without at Least Five (5) Days Written Notice *Bankruptcy Rule* 4001(c)(1)(B)(iv) *Local Rule* 4001-2(a)(i)(S)	The automatic stay pursuant to section 362 of the Bankruptcy Code will be modified, lifted and vacated to the extent necessary to permit the Debtors, DIP Lender, and Prepetition Lender to accomplish the transactions contemplated by the Interim DIP Order. The DIP Lender's ability to exercise rights and remedies is subject to a three (3) business day Remedies Notice Period (during which time parties in interest are entitle to seek a hearing with the Court on an emergency basis) or pursuant to an order of the Court.	Interim DIP Order ⁋⁋ 7(c), 22
Provisions Limiting What Parties in Interest (Other Than the Debtors) May Raise *Local Rule* 4001-2(a)(i)(T)	The Interim DIP Order provides that, following delivery of a Termination Declaration by the Lender during an Event of Default, the only issue that may be raised during a hearing regarding the exercise of rights or remedies is whether an Event of Default has in fact occurred and is continuing.	Interim DIP Order ⁋ 22
Immediate Liens on Avoidance Actions *Bankruptcy Rule* 4001(c)(1)(b) *Local Rule* 4001-2(a)(i)(U)	The DIP Credit Agreement provides that the DIP Lender will be granted a perfected, first priority lien on "avoidance actions under sections 502(d), 544-553 of the Bankruptcy Code or the proceeds therefrom, or as otherwise recovered under section 506(c) or any other avoidance actions under the Bankruptcy Code."	DIP Credit Agreement § 10.01(2)

Summary of Material Terms		
Immediate Section 506(c), 552(b) "Equities of the Case," and Marshalling Waivers *Bankruptcy Rule* 4001(c)(1)(B)(x) *Local Rule* 4001-2(a)(i)(V)-(X)	• *Section 506(c) Waiver*: Effective upon entry of Final DIP Order, but without prejudice to the terms of the Final Order. • *Section 552(b) "Equities of the Case" Waiver*: Effective upon entry of Final DIP Order, but without prejudice to the terms of the Final Order. • *Marshalling Waiver*: Effective upon entry of Interim DIP Order.	Interim DIP Order ¶¶ 8, 9
Loan Covenants *Bankruptcy Rule* 4001(c)(1)(B) *Local Rule* 4001-2(a)(i)	The DIP Credit Agreement contains customary covenants for a transaction of this type, including limitations on indebtedness, liens, guarantees, investments, fundamental changes, disbursements, weekly reporting, and compliance with milestones.	Interim DIP Order, Art. 7
Sale Matters *Bankruptcy Rule* 4001(c)(1)(B)	The Interim DIP Order Provides: "Notwithstanding Section 7.11 of the DIP Credit Agreement, the Exclusive Period shall terminate at the end of the day on November 14, 2024. From November 15, 2024, until the Bankruptcy Court's approval of the Bid Protections in favor of the DIP Lender (or its designated affiliate) set forth in the proposed Bidding Procedures, the Debtors shall (i) act in accordance with the proposed Bidding Procedures, (ii) use their reasonable best efforts to have the Bid Protections and the Bidding Procedures approved on an expedited basis in accordance with the DIP Credit Agreement, and (iii) be prohibited from considering any bid of any form for the Debtors' assets, in whole or in part."	Interim DIP Order ¶ 24
Indemnification *Bankruptcy Rule* 4001(c)(1)(B)(ix)	The Debtors will indemnify and hold harmless the DIP Lender and its affiliates, subject to customary exceptions and in accordance with the terms of the DIP Documents.	DIP Credit Agreement § 11.5(2)
Release *Bankruptcy Rule* 4001(c)(1)(B)(viii)	The Interim DIP Order provides : "Effective as of the date of entry of this Interim Order, each of the Debtors and each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, and past, present and future subsidiaries and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition Secured Lender, the DIP Lender, and each of their respective Representatives (solely in their capacities as such) (collectively, the "Released Parties"), from any and all liability to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, in each case arising out of or related to the Prepetition Loan Documents, the DIP Facility, the DIP Documents, the DIP Roll-Up Loans, the negotiation thereof and the transactions and agreements	Interim DIP Order ¶ F(vii)

Summary of Material Terms		
	reflected thereby, that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter may have against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of this Interim Order; *provided* that the release set forth in this section shall not release (i) any claims against or liabilities of a Released Party that a court of competent jurisdiction determines has resulted from such Released Party's bad faith, fraud, gross negligence or willful misconduct or (ii) the DIP Lender from honoring its obligations to the Debtors under the DIP Documents."	

BASIS FOR RELIEF

A. Entry into the DIP Documents Is an Exercise of the Debtors' Sound Business Judgment

18. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents, obtain access to the proceeds of the DIP Facility, and continue using Cash Collateral. Bankruptcy courts routinely defer to a debtor's business judgment on certain business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. *See U.S. Bank Tr. N.A. v. Am. Airlines, Inc. (In re AMR Corp.)*, 485 B.R. 279, 287 (Bankr. S.D.N.Y. 2013) ("In determining whether to approve a debtor's request [for postpetition financing] under Section 364, a Court must examine whether the relief requested is an appropriate exercise of the debtor's business judgment.") (citation omitted); *Trans World Airlines, Inc. v. Travellers Int'l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that the interim loan, receivables facility and asset-based facility were approved because they "reflect[ed] sound and prudent business judgment on the part of TWA . . . [were] reasonable under the circumstances and in the best interests of TWA and its creditors"); *cf. In re Filene's Basement*, LLC, 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) ("Transactions under § 363 must be based upon the sound business judgment of the debtor or trustee."). In fact, "[m]ore exacting scrutiny would slow the administration of the debtor's estate and increase its

cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

19. In determining whether the Debtors have exercised sound business judgment in entering into the DIP Documents, the Court should consider the economic terms of the DIP Facility under the totality of circumstances. *See* Hr'g Tr. at 734–35:24, *In re Lyondell Chem. Co.*, No. 09-10023 (Bankr. S.D.N.Y. Feb. 27, 2009) (recognizing that "the terms that are now available for DIP financing in the current economic environment aren't as desirable" as they once were previously, referring to the period following the 2008 financial markets collapse); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (while many of the terms favored the DIP lenders, "taken in context, and considering the relative circumstances of the parties," the court found them to be reasonable); *In re Elingsen McLean Oil Co., Inc.*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard" bargains to acquire funds for its reorganization). Moreover, the Court may appropriately take into consideration non-economic benefits to the Debtors offered under a proposed postpetition facility. *See In re ION Media Networks, Inc.*, No. 09-13125 (JMP), 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (holding that "a business decision to obtain credit from a particular lender is almost never based purely on economic terms. . . . Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. . . .").

20. The Debtors' decision to enter into the DIP Documents is an exercise of their sound business judgment. As further discussed in the First Day Declaration, the DIP Facility was the product of substantial negotiations among the Debtors and DIP Lender, which was the best (and

only) available source of postpetition financing given the realities of the Debtors' finances and business prospects. First Day Decl. ⁋⁋ 49–53. The Debtors ultimately decided that moving forward with the proposed DIP Facility was an appropriate step given that the DIP Facility will allow the Debtors to fund these Chapter 11 Cases and pursue a value-maximizing sale process for the benefit of the Debtors' creditors and all stakeholders. As detailed in the First Day Declaration, the DIP Facility was conditioned on the Debtors simultaneous entry into a stalking horse asset purchase agreement with the DIP Lender (the "Stalking Horse APA"), pursuant to which the DIP Lender proposes to acquire substantially all of the Debtors' assets for (i) a credit bid under section 363(k) of the Bankruptcy Code, (ii) an amount, in cash, equal $200,000, plus certain specified cure costs, and (iii) the assumption of certain liabilities (the "Stalking Horse Bid"). Without the Stalking Horse Bid, the Debtors would have been forced to commence these Chapter 11 Cases under Chapter 7 of the Bankruptcy Code—and absent the incremental liquidity provided by the DIP Facility, the Debtors will be unable to sustain their operations to conduct a value-maximizing postpetition sale process to ensure they receive the highest or otherwise best offer for their assets.

21. In light of the above, the Debtors determined that entry into the DIP Facility was, and is, the best path available and they have obtained the best terms currently achievable under the circumstances.

B. The Debtors Should Be Authorized To Obtain Postpetition Financing Under Section 364(c) of the Bankruptcy Code

22. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that the debtor in possession is "unable to obtain unsecured credit allowable under [section 503(b)(l) of the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c); *see also In re Satcon Tech. Corp.*, 2012 WL 6091160, at *5 (Bankr. D. Del. Dec. 7, 2012) ("Section 364(c) of the Bankruptcy Code provides,

among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, the Bankruptcy Court may authorize the debtor to obtain credit or incur debt."); *In re Republic Airways Holdings Inc.*, 2016 WL 2616717, at *10 (Bankr. S.D.N.Y. May 4, 2016) ("The debtor is not required to seek credit from every possible source but rather must demonstrate that it has made a reasonable effort to seek other sources of credit available under section 364(a) and (b).") (citing *In re Ames Dep't Stores*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990)) (quotation marks omitted); *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (debtor seeking secured credit under section 364(c) of the Bankruptcy Code must establish that it was unable to obtain unsecured credit pursuant to section 364(b) of the Bankruptcy Code), modified on other grounds, 75 B.R. 553 (Bankr. E.D. Pa. 1987).

23. Courts have articulated a three-part test to determine whether a debtor may obtain financing under section 364(c) of the Bankruptcy Code:

(a) the debtor is unable to obtain unsecured credit under section 364(b) (*i.e.*, by granting a lender administrative expense priority);

(b) the credit transaction is necessary to preserve the assets of the estate; and

(c) the terms of the transaction are fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender.

See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (applying these factors); *In re Aqua Assocs.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (same).

(i) The Debtors Are Unable to Obtain Financing on More Favorable Terms Than the DIP Facility

24. Debtors need to demonstrate that they made a reasonable effort to find alternative financing before a bankruptcy court will order superpriority liens. *In re Latam Airlines Grp. S.A.*, 2020 WL 5506407, at *26. But the Bankruptcy Code "imposes no duty [on a debtor] to seek credit

from every possible lender before concluding that such credit is unavailable." *Id.* (citing *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986)); *In re Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584−85 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense); *Ames Dep't Stores, Inc.*, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain superior terms after discussing possible postpetition financing with four lenders); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); see also *In re Phoenix Steel Corp.*, 39 B.R. 218, 222 (D. Del. 1984) (holding the debtor satisfied its burden to show an inability to obtain credit on other terms through its time and effort spent trying to obtain credit on alternative terms and conditions).

25. Moreover, when only a few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), aff'd sub nom. *Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (holding "[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable").

26. The terms of the DIP Facility are the product of extensive negotiations between the Debtors' and the DIP Lenders. Through these negotiations, the parties developed the terms of the DIP Credit Agreement, which are the best and only reasonable financing option currently available under the circumstances. The DIP Facility is the Debtors' only viable source of funding, whether on an out-of-court or in-court basis, and no other better alternative, taken as a whole, is currently available to the Debtors. *See* First Day Decl. ¶¶ 51–54.

(ii) The DIP Facility Is Necessary to Preserve the Value of the Debtors' Estates

27. It is essential that the Debtors immediately obtain the financing contemplated by the DIP Financing to preserve and protect the value of their estates. The funding contemplated by the DIP Financing will provide the Debtors with the necessary working capital to maintain their operations, pay their employees and other critical obligations, and fund the costs of the sale process and these Chapter 11 Cases. Accordingly, the DIP Financing is necessary to ensure that the Debtors are able to maximize the value of their estates for all stakeholders. *See Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (noting debtors in possession have a duty to maximize their estates' assets).

(iii) The Terms of the DIP Facility Are Fair, Reasonable, and Adequate Under the Circumstances

28. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See, e.g., In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009), Hr'g Tr. 740:4-6 ("[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of the DIP] reasonable here and now."). Here, the terms of the DIP Facility are fair, appropriate, reasonable, adequate under the circumstances, and in the best interests of the Debtors, their estates, and their creditors.

29. As set forth above, the terms of the DIP Facilities were actively negotiated by the Debtors, with the assistance of their advisors. Under the current facts and circumstances, the pricing, fees, and other economics provided for in the DIP Facility, taken as a whole, provide the best presently available financing option for the Debtors, particularly in light of the absence of any

more favorable alternatives. *See* First Day Decl. ¶¶ 51, 54. The DIP Lender also negotiated for milestones that provide the Debtors with adequate time to negotiate and implement a value-maximizing sale process such that agreeing to include these milestones as a condition to entering into the DIP Facility was reasonable and in the Debtors' best interests. Based on the foregoing, the Debtors believe that the terms of the DIP Financing are within the range of reasonableness and consistent with market expectations for facilities of this type.

C. The Debtors Should Be Authorized to Obtain Priming Liens Under Section 364(d) of the Bankruptcy Code

30. Section 364(d) of the Bankruptcy Code provides that a debtor may incur debt "secured by a senior or equal lien on property of the estate that is subject to a lien only if " the court finds, after notice and hearing, that (a) the debtors in possession are "unable to obtain such credit otherwise" and (b) "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d); *see also Shaw Indus., Inc. v. First Nat'l Bank of PA (In re Shaw Indus., Incs.)*, 300 B.R. 861, 863 (Bankr. W.D. Pa. 2003) (where debtor made efforts by "contact[ing] numerous lenders" and was unable to obtain credit without a priming lien, it met its burden under section 364(d) of the Bankruptcy Code); *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 630-31 (Bankr. S.D.N.Y. 1992) (holding that debtor must make an effort to obtain credit without the requirement of a priming lien but is not required to seek credit from every possible lender); *In re Dunes Casino Hotel*, 69 B.R. 784, 791 (Bankr. D.N.J. 1986) (holding that the debtor had made required efforts under section 364(d) of the Bankruptcy Code based on evidence that the debtor had attempted unsuccessfully to borrow funds on an unsecured basis or secured by junior liens, but that at least three such lenders were willing to advance funds secured by a superpriority lien).

31. Here, the liens granted to the DIP Lender only prime the Prepetition Secured Lender—the same entity providing the DIP Loans—and the Clarkson Note. Mr. Clarkson has consented to such treatment and the Prepetition Secured Lender has similarly consented to this treatment subject to the adequate protection provisions described in the DIP Credit Agreement and the DIP Orders.

32. As set forth in the Interim DIP Order, none of the liens or claims granted pursuant to the DIP Orders shall alter the rights or priority of any Prepetition Permitted Liens, other than the Clarkson Liens (which altered treatment and priority Mr. Clarkson has consented and agreed to). The Debtors also, as set forth above, are not aware of any available financing on better terms than those offered by the DIP Lender. The priming of the Prepetition Secured Lender Liens and Clarkson Liens therefore satisfies the requirements of section 364(d) of the Bankruptcy Code.

D. The Debtors Should Be Authorized to Use Cash Collateral

33. Section 363 of the Bankruptcy Code governs the Debtors' use of property of their estates, including Cash Collateral. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral as long as "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Here, the DIP Lenders and Mr. Clarkson and the Prepetition Secured Lender consent or are deemed to consent to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim DIP Order. The Debtors believe those terms and limitations (including the provision of adequate protection granted to the Prepetition Secured Lender, as described above) are appropriate and reasonable and that such adequate protection is sufficient to secure any Adequate Protection Obligations under the

circumstances. The Debtors therefore submit that they should be authorized to use the Cash Collateral on the terms set forth in the DIP Documents.

E. The Roll Up Is Appropriate.

34. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound business purpose. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions." (citing cases)). The business judgment rule affords appropriate deference to a debtor's decision making regarding the operation of its business. *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) ("[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

35. Courts in this district have regularly approved, including on an interim basis, roll-ups made pursuant to new money debtor-in-possession financings—recognizing that a roll-up is often needed to secure the most favorable economic terms. *See, e.g., In Re Fluid Market, Inc.*, Case No. 24-12363 (CTG) (Bankr. D. Del Oct. 18, 2024) (authorizing a $1.3 million roll-up of prepetition advances and $3.3 million in new money loans upon entry of interim order); *In re Sientra, Inc.*, Case No. 24-10245 (JTD) (Bankr. D. Del. Feb. 14, 2024) (interim order authorizing $22 million new money loans and $35 million in roll-up loans); *In re Nogin, Inc.*, No. 23-11945 (CTG) (Bankr. D. Del. Dec. 7, 2023) (authorizing $19.2 million of total financing through interim order, including refinancing $8.5 million of prepetition debt); *In re Phoenix Services Topco LLC*, No. 22-10906 (MFW) (Bankr. D. Del. Sept. 29, 2022) (authorizing $25 million in new money on an interim basis with an additional $25 million funded into escrow for a roll-up of approximately

$75 million); *In re TPC Group Inc.*, No. 22-10493 (CTG) (Bankr. D. Del. June 3, 2022) (authorizing $32 million in new money and a roll-up of $59 million pursuant to interim order); *In re Nine Point Energy Holdings, Inc.*, No. 21-10570 (MFW) (Bankr. D. Del. March 17, 2021) (authorizing $13 million in new money and a roll-up of $39 million pursuant to interim order); *In re True Religion Apparel, Inc.*, No. 20-10941 (CSS) (Bankr. D. Del. Apr. 15, 2020) (authorizing a DIP facility comprising (among other things) $1.7 million in new money to be provided following the entry of an interim order, $6.7 million of new money to be provided following the entry of the final order, and a rollup of $45 million in prepetition obligations upon entry of interim order); *In re APC Automotive Techs. Intermediate Hldgs., LLC*, Case No. 20- 11466 (CSS) (Bankr. D. Del. June 4, 2020) (authorizing full roll-up of approximately $90 million of an asset-based lending facility upon entry of an interim order).

36. Converting the Prepetition Bridge Loan Obligations into DIP Obligations is justified under the circumstances. The funding provided under the Prepetition Loan Documents was done on the eve and in contemplation of the commencement of these Chapter 11 Cases. The bridge financing was necessary to maintain the Debtors' business while completing the negotiations of the DIP Facility and Stalking Horse APA and preparing to commence these cases. Accordingly, since such funding was essentially an advance on the DIP Financing, a roll-up of such amounts upon entry of the Interim DIP Order is appropriate. Moreover, the roll-up is a condition precedent to the Debtors' ability to access the new money—which, as noted above, is necessary to continue the Debtors' day-to-day operations, preserve relationships with employees, customers, and vendors, and market the Debtors' assets in a manner that will preserve and obtain value for all of the Debtors' stakeholders. Accordingly, the proposed roll-up is an appropriate exercise of the Debtors' business judgment and should be approved.

F. Carve Out Should Be Approved

37. The Interim DIP Order provides that the DIP Liens and Superpriority Claims are subject and subordinate to the Carve-Out. Without the Carve-Out, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be compensated in these Chapter 11 Cases would be restricted. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). The Carve-Out does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers. Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 Cases by ensuring that assets remain for the payment of amounts to the Clerk of the Court or Subchapter V Trustee fees, and professional fees of the Debtors.

G. The DIP Lender Should Be Deemed a Good-Faith Lender under Section 364(e) of the Bankruptcy Code

38. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that such reversal or modification "does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith." 11 U.S.C. § 364(e).

39. As described in the First Day Declaration, the terms of the DIP Facility were negotiated in good faith. First Day Decl. ¶¶ 49. Moreover, the terms and conditions of the DIP Loan Documents are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, and in accordance with the DIP

Orders and the DIP Documents, including, for the avoidance of doubt, the DIP Budget. Accordingly, the Court should find that the DIP Lender is a "good faith" lender, entitled to all of the protections afforded by section 364(e) of the Bankruptcy Code.

H. Modification of the Automatic Stay Is Warranted

40. The relief requested herein contemplates a modification of the automatic stay to permit the Debtors to: (a) grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (b) upon the occurrence of an Event of Default (as defined in the DIP Credit Agreement), subject to the notice periods set forth in the DIP Orders, for the DIP Lender to exercise remedies available to it; and (c) implement the terms of the DIP Orders, including payment of all amounts referred to in the DIP Documents.

41. Stay modifications of this kind are ordinary and standard features of debtor in possession financing arrangements and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these Chapter 11 Cases.

I. Request for Interim Hearing and Authority to Make Interim Borrowings Under the DIP Financing

42. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. However, Bankruptcy Rules 4001(b)(2) and (c)(2) allow the Court to (a) hold a preliminary expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral if so requested and (b) authorize, to the extent necessary to avoid immediate and irreparable harm to the estate, the use of cash collateral or the obtaining of credit. In examining requests for interim relief under this rule, courts apply the same business judgment standard

applicable to other business decisions. *See, e.g., In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985); *see also Ames Dep't Stores*, 115 B.R. at 38.

43. The Debtors request that the Court hold a hearing to consider entry of the Interim DIP Order authorizing the Debtors—in the period from and after entry of the Interim DIP Order until the Final Hearing—to borrow funds under the DIP Facility in accordance with the DIP Budget.

44. The DIP Budget was developed by the Debtors and their professionals, in consultation with the DIP Lender, to ensure that the Debtors have sufficient funds to operate their business in the ordinary course while running a value-maximizing sale process and paying their administrative expenses. Further, the DIP Budget contemplates that in the period from and after entry of the Interim DIP Order until the Final Hearing, the Debtors will use only those funds necessary to avoid immediate and irreparable harm.

REQUEST FOR A FINAL HEARING

45. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request the Court set a date for the Final Hearing that is as soon as practicable, and in no event later than December 6, 2024, in accordance with the Milestones, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

SATISFACTION OF BANKRUPTCY RULE 6003(b)

46. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one days of the Petition Date requires that the Debtors demonstrate that such relief "is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003(b). As set forth throughout this Motion, the success of the Chapter 11 Cases depends upon access to the DIP Facility and the use of Cash Collateral, and the relief requested is narrowly tailored to only the

relief that is necessary to prevent immediate and irreparable damage to the Debtors' operations. For this reason, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

47. Pursuant to Bankruptcy Rule 6004(h), "An 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). As set forth throughout this Motion and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) to the extent applicable to the DIP Orders.

DEBTOR STATEMENT PURSUANT TO LOCAL RULE 4001-2(a)(iii)

48. The Debtors believe that the DIP Budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the DIP Budget. *See* First Day Decl. ⁋ 55.

RESERVATION OF RIGHTS

49. Nothing in the DIP Orders or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action related to the DIP Facility, except to the extent set forth the final order, or (iv) shall be construed as a promise to pay a claim.

NOTICE

50. The Debtors will provide notice of this Motion to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Subchapter V Trustee appointed in these Chapter 11 Cases, (iv) the Internal Revenue Service; (v) the Debtors' twenty (20) largest unsecured creditors (excluding insiders); (vi) counsel to the DIP Lender and Prepetition Secured Lender, Morgan, Lewis & Bockius LLP, 101 Park Ave., New York, NY 10036, Attn: Jennifer Feldsher and Jon M. English; (vii) Timothy Clarkson, and (viii) (all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Rule 9013-1(m) of the Local Rules. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

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

Dated: November 11, 2024
Wilmington, Delaware

FAEGRE DRINKER BIDDLE & REATH LLP

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Interim DIP Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11 (Subchapter V)
Recombinetics, Inc., *et al.*,	Case No. 24-12593 (___)
Debtors.[1]	(Jointly Administered)

INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED LENDER, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF

Upon consideration of the motion (the "**Motion**")[2] of the above-captioned debtors and debtors in possession (collectively, the "**Debtors**"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the "**Bankruptcy Code**"), rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), rules 2002-1, 4001-2, 7007-1, 9013-4, and 9014-2 of the Local Bankruptcy Rules for the District of Delaware (the "**Local Rules**"), seeking entry of this interim order (this "**Interim Order**") and the Final Order (as defined herein and, together with this Interim Order, the "**DIP Orders**") among other things:

- authorizing the Debtors to obtain postpetition financing ("**DIP Financing**") pursuant to a senior, secured, superpriority, debtor in possession loan facility (the "**DIP Facility**") subject to the terms and conditions set forth in this Interim Order and that certain Superpriority Debtor in Possession Loan and Security Agreement, attached hereto in substantially final form as **Exhibit 1** (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**DIP Credit**

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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), Therillume, Inc. (4995). The mailing address for each of the Debtors is 3388 Mike Collins Drive, Eagan, Minnesota 55121.

2 Capitalized terms used but not defined herein are given the meanings ascribed to such terms in the Motion or DIP Credit Agreement (as defined herein).

Agreement"), by and among the Debtors and TOG Technologies, LLC ("**TOG**") or its designee (the "**DIP Lender**"), consisting of (i) new money term loans in an aggregate principal amount of up to $[1,838,757.56], of which $[1,298,757.56] will be available upon entry of this Interim Order, subject to the Initial DIP Budget, and the remainder will be available upon the entry of the Final Order, and (ii) $[1,820,877.95][3] of DIP Roll-Up Loans (as defined below) to roll up and convert in full the Prepetition Bridge Loan Obligations (as defined below) into DIP Obligations (as defined below), which roll up and conversion will be deemed to occur upon entry of this Interim Order (the loans to be made available under the foregoing clauses (i) and (ii), the "**DIP Loans**" and the commitments therefor, the "**DIP Commitments**");

- authorizing the Debtors to incur the DIP Loans and all extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees, exit fees, premiums, and other fees), costs, expenses and other liabilities and obligations (including indemnities and similar obligations, whether contingent or absolute) due or payable under the DIP Documents (as defined below) (collectively, the "**DIP Obligations**");

- authorizing the Debtors to execute, deliver and perform under the DIP Credit Agreement and all other documents and instruments that may be reasonably necessary or appropriate in connection with the DIP Facility (in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof, together with the DIP Credit Agreement, the "**DIP Documents**");

- subject to the Carve-Out (as defined below), granting to the DIP Lender allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code;

- granting to the DIP Lender valid, enforceable, non-avoidable and automatically perfected liens pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code on the DIP Collateral (as defined below), on the terms described herein, and, for the avoidance of doubt, subject to the Carve Out;

- authorizing the DIP Lender to take all commercially reasonable actions to implement the terms of this Interim Order;

- waiving (a) the Debtors' right to surcharge the Prepetition Collateral (as defined below) and the DIP Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code and (b) any "equities of the case" exception under section 552(b) of the Bankruptcy Code;

- waiving the equitable doctrine of "marshaling" and other similar doctrines (a) with respect to the DIP Collateral for the benefit of any party other than the DIP Lender and

[3] [NTD: Bracketed amounts to be updated if Interim Order entered after 11/12/24.]

(b) with respect to the Prepetition Collateral (including the Cash Collateral) for the benefit of any party other than the Prepetition Secured Lender (as defined below);

- authorizing the Debtors to use proceeds of the DIP Facility and Cash Collateral (as defined below) in accordance with the DIP Orders and the DIP Documents;
- authorizing the Debtors to pay the DIP Obligations as they become due and payable in accordance with the DIP Documents;
- subject to the restrictions set forth in the DIP Documents and the DIP Orders, authorizing the Debtors to use Prepetition Collateral (including Cash Collateral) and provide adequate protection, as and to the extent set forth herein, to the Prepetition Secured Lender for any diminution in value of its interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date (any such diminution, "**Diminution in Value**");
- vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the DIP Lender to implement and effectuate the terms and provisions of the DIP Orders and the DIP Documents;
- waiving any applicable stay (including under Bankruptcy Rule 6004(h)) and providing for immediate effectiveness of this Interim Order; and
- scheduling a final hearing (the "**Final Hearing**") to consider final approval of the DIP Facility on the terms of a proposed order (the "**Final Order**") to be posted to the docket prior to the Final Hearing.

The Court having considered the interim relief requested in the Motion, the exhibits attached thereto, the *Declaration of Rocco Morelli in Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "**First Day Declaration**"), the available DIP Documents, and the evidence submitted and arguments made at the interim hearing held on November [●], 2024 (the "**Interim Hearing**"); and due and sufficient notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, otherwise is fair and reasonable, in the best interests of the Debtors and their estates, and essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[4]

A. *Petition Date*. On November 11, 2024 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**") in the United States Bankruptcy Court for the District of Delaware (the "**Court**").

B. *Debtors in Possession*. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to section 1184 of the Bankruptcy Code.

C. *Jurisdiction and Venue*. This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)–(b) and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order approving the relief sought in the Motion consistent with Article III of the United States Constitution. Venue for these Chapter

[4] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

11 Cases and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are sections 105, 361, 362, 363(b), 363(c), 363(e), 364(c), 364(d)(1), 364(e), 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and the Local Rules.

D. *Notice.* The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Proper, timely, adequate and sufficient notice of the Motion and the Interim Hearing has been provided to (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Subchapter V Trustee appointed in these Chapter 11 Cases, (iv) the Internal Revenue Service; (v) the Debtors' twenty (20) largest unsecured creditors (excluding insiders); (vi) counsel to the DIP Lender and Prepetition Secured Lender, Morgan, Lewis & Bockius LLP, 101 Park Ave., New York, NY 10036, Attn: Jennifer Feldsher and Jon M. English; (vii) Timothy Clarkson; and (viii) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"), in accordance with the Bankruptcy Code, Bankruptcy Rules and Local Rules, and no other or further notice was required under the circumstances. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing.

E. *Cash Collateral*. As used herein, the term "**Cash Collateral**" shall mean all of the Debtors' cash, wherever located and held, including cash in deposit accounts, that constitutes or will constitute "cash collateral" of the DIP Lender and the Prepetition Secured Lender within the meaning of section 363(a) of the Bankruptcy Code.

F. *Debtors' Stipulations*. Subject to the provisions and limitations contained in paragraph 26 hereof, and after consultation with their attorneys, the Debtors admit, stipulate and agree that:

(i) *Prepetition Bridge Loan*. Pursuant to that certain Loan and Security Agreement, dated as of October 3, 2024 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "**Prepetition Rescue Credit Agreement**" and, collectively with the other "Loan Documents" (as defined in the Prepetition Rescue Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the "**Prepetition Loan Documents**"), by and among (a) Debtor Recombinetics, Inc. ("**Recombinetics**") and (b) Debtor Acceligen, Inc. ("**Acceligen**"), as borrowers (together with Recombinetics, the "**Prepetition Loan Parties**") and (c) TOG, as successor to URUS GROUP, LP, a Delaware limited partnership ("**URUS**," and together with TOG and its successors and assigns, the "**Prepetition Secured Lender**"), the Prepetition Loan Parties incurred "Obligations" (as defined in the Prepetition Rescue Credit Agreement, the "**Prepetition Bridge Loan Obligations**") to the Prepetition Secured Lender on a joint and several basis. The Prepetition Rescue Credit Agreement was entered in order to provide rescue financing to the Prepetition Loan Parties (the "**Prepetition Rescue Financing**") and fund working capital in anticipation of the commencement of these Chapter 11 Cases. Pursuant to the First Amendment to the Prepetition Rescue Credit Agreement, URUS (the original lender) assigned all of its rights and obligations under the Prepetition Rescue Credit Agreement to the TOG, and TOG provided additional financing to the Prepetition Loan Parties for legal and other expenses in contemplation of the commencement of the Chapter 11 Cases.

(ii) *Prepetition Bridge Loan Obligations*. As of the Petition Date, the Prepetition Loan Parties were justly and lawfully indebted and liable to the Prepetition Secured Lender without defense, challenge, objection, claim, counterclaim, or offset of any kind, for the Loan (as defined in the Prepetition Rescue Credit Agreement) in the aggregate principal amount of not less than [$1,723,800], plus accrued and unpaid interest thereon and any fees, expenses and disbursements, costs, charges, indemnities, and any other Prepetition Bridge Loan Obligations incurred under the Prepetition Loan Documents;

(iii) *Validity of Prepetition Bridge Loan Obligations*. The Prepetition Bridge Loan Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Loan Parties, enforceable in accordance with the respective terms of the relevant documents, and no portion of the Prepetition Bridge Loan Obligations or any payment made to the Prepetition Secured Lender or applied to or paid on account of the Prepetition Bridge Loan Obligations prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim (as such term is defined in the Bankruptcy Code), cause of action (including any avoidance actions under Chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or any applicable non-bankruptcy law;

(iv) *Validity, Perfection and Priority of Prepetition Liens*. As of the Petition Date, pursuant to the Prepetition Loan Documents, the Prepetition Loan Parties granted to the Prepetition Secured Lender, a security interest in and continuing lien on (the "**Prepetition Liens**") substantially all of their respective assets and property, including (but, for the avoidance of doubt, not including any Excluded Assets (as defined in the Prepetition Rescue Credit Agreement)) (i) a valid, binding, properly perfected, enforceable, non-avoidable first priority security interest in and continuing lien on the Collateral (as defined in the Prepetition Rescue Credit Agreement), which, for the avoidance of doubt, includes Cash Collateral, and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the "**Prepetition Collateral**" and the liens on and security interests in the Prepetition Collateral, the "**Prepetition Liens**"), subject and subordinate only to Permitted Liens as defined in the Prepetition Rescue Credit Agreement, solely to the extent such permitted liens are (a) valid, perfected and non-avoidable on the Petition Date or (b) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (collectively, the "**Prepetition Permitted Liens**");

(v) *Waiver of Challenge*. None of the Prepetition Liens are subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, subordination, recharacterization, avoidance or other cause of action (including any avoidance actions under Chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or any applicable non-bankruptcy law;

(vi) *No Control*. The Prepetition Secured Lender does not control (and has not in the past controlled) any of the Debtors or their respective properties or operations, does not have authority to determine the manner in which any Debtor's operations are conducted or control persons or insiders of any Debtor by virtue of any actions taken with respect to, in connection with, related to or arising from any Prepetition Loan Documents;

(vii) *No Claims or Causes of Action*. No claims or causes of action held by the Debtors or their estates exist against, or with respect to, the Prepetition Secured Lender and each of its Representatives (as defined below), in each case, in their capacity as such, under or relating to any agreements by and among the Debtors and the Prepetition Secured Lender that is in existence as of the Petition Date; and

(viii) *Release*. Effective as of the date of entry of this Interim Order, each of the Debtors and each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, and past, present and future subsidiaries and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition Secured Lender, the DIP Lender, and each of their respective Representatives (solely in their capacities as such) (collectively, the "**Released Parties**"), from any and all liability to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, in each case arising out of or related to the Prepetition Loan Documents, the DIP Facility, the DIP Documents, the DIP Roll-Up Loans, the negotiation thereof and the transactions and agreements reflected thereby, that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter may have against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of this Interim Order; *provided* that the release set forth in this section shall not release (i) any claims against or liabilities of a Released Party that a court of competent jurisdiction determines has resulted from such Released Party's bad faith, fraud, gross negligence or willful misconduct or (ii) the DIP Lender from honoring its obligations to the Debtors under the DIP Documents.

G. *Findings Regarding DIP Financing and Use of Cash Collateral.*

(i) Good and sufficient cause has been shown for the entry of this Interim Order and for authorization of the Debtors to obtain financing pursuant to the DIP Documents.

(ii) The Debtors have demonstrated an immediate and critical need to obtain the DIP Financing and to use Prepetition Collateral (including Cash Collateral) in accordance with the Approved Budget (as defined below) in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to satisfy other working capital and operational needs, and to fund administrative expenses of these Chapter 11 Cases. Access to sufficient working capital and liquidity under the DIP Documents and other financial accommodations provided under the DIP Documents, as well as through the use of Cash Collateral and other Prepetition Collateral, is necessary for the avoidance of immediate irreparable harm to the Debtors' estates and for the preservation and maintenance of their going concern value.

(iii) The DIP Facility is the best source of debtor in possession financing available to the Debtors. The Debtors are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or secured financing on more favorable terms from sources other than the DIP Lender pursuant to the terms of the DIP Documents. The Debtors are also unable to obtain secured credit without granting to the DIP Lender the DIP Liens and the DIP Superpriority Claims (each as defined below) and incurring the Adequate Protection Obligations (as defined herein) on the terms and subject to the conditions set forth in this Interim Order and in the DIP Documents.

(iv) The Debtors continue to collect cash, income, offspring, products, proceeds, and profits generated by the Prepetition Collateral and acquire equipment, inventory and other personal property, all of which constitutes Prepetition Collateral and the Prepetition Secured Lender's Cash Collateral under section 363(a) of the Bankruptcy Code. The Debtors desire and need to use the Prepetition Secured Lender's Cash Collateral for general corporate purposes.

(v) Based on the Motion, the First Day Declaration, and the record and argument presented to the Court at the Interim Hearing, the terms of the DIP Financing, the terms of the adequate protection granted to the Prepetition Secured Lender as provided in paragraph 12 of this Interim Order (the "**Adequate Protections**"), and the terms on which the Debtors may continue to use Prepetition Collateral (including Cash Collateral) pursuant to this Interim Order and the DIP Documents are consistent with the Bankruptcy Code, including section 506(b) thereof, are fair and reasonable, and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

(vi) This Interim Order, the DIP Financing, the Adequate Protections, and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the Debtors, the DIP Lender, and the Prepetition Secured Lender (each of whom acted in good faith in negotiating such documents), and all of the loans and other financial accommodations extended by the DIP Lender to the Debtors under, in respect of, or in connection with, the DIP Financing and the DIP Documents (including the granting of Adequate Protection provided herein), shall be deemed to have been extended by the DIP Lender in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Lender (and its respective successors and assigns) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(vii) The Prepetition Secured Lender and the DIP Lender have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of this Interim Order, the DIP Facility and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens, any challenges or objections to the DIP Facility or the use of Cash Collateral, the DIP Documents, and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification, the Prepetition Secured Lender and the DIP Lender shall be and hereby are indemnified (as applicable) as and to the extent (and subject to the limitations) provided in the Prepetition Loan Documents and the DIP Documents, as applicable, including, without limitation, Section 11.4 of the DIP Credit Agreement.

(viii) The Prepetition Secured Lender is entitled to the Adequate Protections as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code for any Prepetition Loan Obligations that are not rolled up and converted to DIP Oligations hereunder. Based on the Motion and on the record presented to the Court, the terms of the proposed Adequate Protections are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Prepetition Collateral, including Cash Collateral.

(ix) To the extent its consent is required, the Prepetition Secured Lender has consented or is deemed to have consented to the use of, as applicable, the Prepetition Collateral, including Cash Collateral, the imposition of the Carve-Out, and the priming of the Prepetition Liens on the Prepetition Collateral by the DIP Liens (subject to the Prepetition Permitted Liens), on the terms set forth in this Interim Order and the DIP Documents; *provided* that nothing in this Interim Order or the DIP Documents shall (x) be construed as the affirmative consent by the Prepetition Secured Lender for the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Financing authorized by this Interim Order, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) other than as contemplated by this Interim Order, or (z) prejudice, limit or otherwise impair the rights of the Prepetition Secured Lender to seek new, different or additional adequate protection or assert any other right, and the rights of any other party in interest, including the Debtors, to object to such relief are hereby preserved.

(x) The Debtors have prepared and delivered to the advisors to the DIP Lender an initial budget (the "**Initial DIP Budget**"), attached hereto as Schedule 1, which Initial DIP Budget is acceptable to the DIP Lender. The Initial DIP Budget is a 13-week cash flow forecast of the Debtors' anticipated receipts and disbursements. The Initial DIP Budget may be modified, amended, extended, and updated from time to time in accordance with the DIP Credit Agreement and this Interim Order. Each subsequent budget, once approved by the DIP Lender (in accordance with the DIP Credit Agreement), shall modify, replace, supplement or supersede, as applicable, the Initial DIP Budget for the periods covered thereby (the Initial DIP Budget and each subsequent approved budget, an "**Approved Budget**").

(xi) The Prepetition Secured Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Lender with respect to proceeds, product, offspring, or profits of any of the Prepetition Collateral; *provided* that the foregoing shall be without prejudice to the terms of the Final Order with respect to the period from and after the entry of the Final Order.

H. *Immediate Entry*. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and the applicable Local Rules. Absent the relief granted in this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Financing and continued use of Prepetition Collateral (including Cash Collateral), in accordance with this Interim Order and the DIP Documents, are therefore in the best interests of the Debtors' estates and consistent with the Debtors' fiduciary duties. The Motion and this Interim Order comply with the requirements of Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and the applicable Local Rule.

I. *Prepetition Permitted Liens; Continuation of Prepetition Liens*. Nothing herein constitutes a finding or ruling by this Court that any alleged Prepetition Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Lender, or the Prepetition Secured Lender to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Lien. For the avoidance of doubt, the right of a seller of goods to reclaim goods under section 546(c) of the Bankruptcy Code does not constitute a Prepetition Permitted Lien, and such right is expressly subject to the DIP Liens (as defined herein) and Prepetition Liens. The Prepetition Liens and the DIP Liens are continuing liens and the DIP Collateral is and will continue to be encumbered by such liens.

J. *DIP Roll-Up Loans*. Upon entry of this Interim Order, but without prejudice to the provisions of paragraph 26 of this Interim Order, the Prepetition Bridge Loan Obligations shall be rolled up and converted into DIP Obligations (the "**DIP Roll-Up Loans**") as of the date of this

Interim Order. The Prepetition Secured Lender who is also the DIP Lender would not have consented to extend the Prepetition Rescue Financing or the DIP Financing or other financial accommodations to the Debtors without the inclusion of the DIP Roll-Up Loans in the DIP Obligations.

Based upon the Motion, the foregoing findings and conclusions, and the overall record before the Court, and after due consideration, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. *Motion Granted*. The Motion is granted on an interim basis on the terms and conditions set forth in this Interim Order. All objections to the Interim Order to the extent not withdrawn, waived, settled, or resolved are hereby overruled on the merits.

2. *Authorization of the DIP Financing and the DIP Documents.*

(a) The Debtors are hereby authorized to execute, deliver, enter into and perform all of their obligations under the DIP Documents and perform such other acts as may be necessary, appropriate or desirable in connection therewith. The Debtors are hereby authorized to borrow up to $[1,838,757.56] in aggregate new money term loans pursuant to the DIP Credit Agreement, subject to any limitations set forth in the DIP Documents. The proceeds of the DIP Loans shall be used for all purposes permitted under the DIP Documents and the Interim Order, subject to and in accordance with the Approved Budget (subject to the Permitted Variance (as defined below)).

(b) Upon entry of this Interim Order, the Debtors are also authorized and empowered to immediately incur indebtedness and obligations under the DIP Credit Agreement to roll up and convert on a dollar-for-dollar basis the Prepetition Bridge Loan Obligations (including interest, and any unpaid fees, expenses and other obligations provided for in the

Prepetition Bridge Loan Documents) into DIP Loans as of the date of this Interim Order. The Debtors are authorized to take such acts as shall be necessary or desirable to effect the roll-up and conversion of the specified Prepetition Bridge Loan Obligations to DIP Obligations.

(c) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments, certificates, agreements, charges, deeds and documents, execute or record pledge and security agreements, mortgages, financing statements and other similar documents, if any, and to pay all fees, expenses and indemnities in connection with or that may be reasonably required, necessary, or desirable in connection with the DIP Financing, including, without limitation:

(i) the execution and delivery of, and performance under, each of the DIP Documents;

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the DIP Lender may accept, it being understood that no further approval of this Court shall be required for any such amendments, waivers, consents or other modifications or the payment of any fees, including attorneys', accountants', appraisers' and financial advisors' fees, and other expenses, charges, costs, indemnities and other like obligations in connection therewith, that do not shorten the maturity of the DIP Facility, increase the aggregate DIP Commitments, increase the rate of interest or fees payable thereunder, or release any DIP Liens. Updates, modifications, and supplements to the Approved Budget shall not require any further approval of this Court;

(iii) the non-refundable payment to the DIP Lender of any fees in connection with the DIP Facility (subject to the requirements for the payment of postpetition

Lender Professional Fees set forth in subparagraph (iv), below), including any amendment fees, premiums, servicing fees, audit fees, structuring fees, upfront fees, closing fees, commitment premiums, exit fees, closing date fees, or prepayment fees, and any amounts due in respect of any indemnification and expense reimbursement obligations, in each case, as provided in the DIP Documents; the payment of the foregoing amounts shall be irrevocable, and shall be deemed to have been approved upon entry of this Interim Order, whether any such obligations arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, disallowance, impairment, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law; and

(iv) to pay the fees, costs and expenses incurred, whether before or after the Petition Date, by professionals retained by the Prepetition Secured Lender or DIP Lender, including Morgan, Lewis & Bockius LLP, in connection with the Prepetition Rescue Financing or DIP Facility (the "**Lender Professionals**," and such fees, costs and expenses, the "**Lender Professional Fees**"), subject, in the case of Lender Professional Fees incurred on or after the Petition Date, to review for reasonableness consistent with the procedures set forth below. In the case of Lender Professional Fees incurred on or after the Petition Date, the Lender Professionals shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, this Court for compensation and reimbursement of fees and expenses but shall submit copies of summary invoices to the Debtors, the U.S. Trustee, and Subchapter V Trustee for any fees incurred on or after the Petition Date, which summary invoices shall provide only the total aggregate number of hours billed, a summary description of services provided and the expenses incurred, a list of professionals who worked on the matter, their hourly rate, and the number of hours billed by such professional, subject to all applicable privilege and work product doctrines. If the Debtors, U.S. Trustee, or Subchapter V Trustee, object to the reasonableness of the fees and expenses of any Lender Professional and cannot resolve such objection within ten (10) days after receipt of such invoices, then the Debtors, U.S. Trustee, or the Subchapter V Trustee, as the case may be, shall file with this Court and serve on such Lender Professional an objection (the "**Fee Objection**"). Any failure by any such party to file a Fee Objection within such ten (10) day period shall constitute a waiver of any right of such party to object to the applicable invoice. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees, costs, and expenses set forth in a Lender Professional fee invoice in respect of the Lender Professional shall be limited to the reasonableness of the particular items or categories of the fees, costs, and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Interim Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs and expenses on any invoice to which no Fee Objection has been timely filed.

3. *DIP Obligations*. Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute legal, valid, binding and non-avoidable obligations of the Debtors, enforceable against each Debtor and its estate in accordance with their respective terms and this Interim Order, and any successors thereto, including any trustee appointed in these Chapter 11 Cases, or in any case under chapter 7 of the Bankruptcy Code upon conversion of any of these Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "**Successor Cases**"). Upon execution and delivery of the DIP Documents, the

DIP Obligations shall include all loans and any other indebtedness or obligations, contingent or absolute, which may from time to time be owing by any of the Debtors to the DIP Lender, in such capacities, in each case, under the DIP Documents and this Interim Order, including all principal, interest, costs, fees, expenses, premiums, indemnities and other amounts. The Debtors shall be jointly and severally liable for the DIP Obligations. Except as permitted hereby, no obligation, payment, transfer, or grant of security hereunder or under the DIP Documents to the DIP Lender shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

4. *Carve-Out.*

(a) As used herein, "**Carve-Out**" means the following expenses: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) (without regard to the notice set forth in (iii) below); (ii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred by persons or firms retained by the Debtors pursuant to section 327 or 328 of the Bankruptcy Code (the "**Debtor Professionals**," and such fees the "**Allowed Debtor Professional Fees**") at any time before or on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Bankruptcy

Court prior to or after delivery of such Carve Out Trigger Notice, provided, that the aggregate amount of such Allowed Debtor Professional Fees included in the Carve-Out shall be the lesser of (x) the budgeted amount of Allowed Debtor Professional Fees in the DIP Budget for the Pre-Trigger Date Period and (y) the actual Allowed Debtor Professional Fees incurred during the Pre-Trigger Date Period less the sum of all Allowed Debtor Professional Fees incurred during the Pre-Trigger Date Period and paid at any time and any retainers held by any Debtor Professionals (the amounts set forth in the foregoing clauses (i) and (ii), the "**Pre-Carve Out Amounts**"); and (iii) Allowed Debtor Professional Fees not to exceed $25,000, in the aggregate, incurred after the first business day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iii) being the "**Post-Carve Out Trigger Notice Cap**").

(b) For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the Debtors, their restructuring counsel, the U.S. Trustee and the Subchapter V Trustee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined below), stating that the Post-Carve Out Trigger Notice Cap has been invoked. Notwithstanding the foregoing, the Carve Out Trigger Notice shall be deemed to have been delivered to the required notice parties on the Maturity Date (as defined in the DIP Credit Agreement). In the event the day on which a Carve Out Trigger Notice is given by the DIP Lender to the Debtors (the "**Termination Declaration Date**") occurs prior to the end of any week set forth in the DIP Budget, for purposes of calculating the portion of the Pre-Trigger Date Professional Fee Carve Out available for such week, the amount of each "Debtor Professional Fees" line item in the DIP Budget for such week shall be multiplied by a fraction, the numerator of which shall be the number of days in such week prior to the Termination Declaration Date, and the denominator of which shall be seven (7).

(c) Funding the Carve-Out. Prior to the Termination Declaration Date and subject to the terms and conditions contained in this Interim Order, the Debtors shall be authorized to utilize a portion of the DIP Loans and Cash Collateral made available to the Debtors in accordance with the DIP Budget under the terms and conditions of the DIP Documents and this Interim Order to fund, on a weekly basis, the amount of Debtor Professional Fees in the Approved Budget for such week into an escrow account that shall be used exclusively for the Carve-Out and to pay Allowed Debtor Professional Fees subject to the terms of this Interim Order (such escrow account, the "**Debtor Professional Fee Escrow Account**"). The Debtors shall not be permitted to deposit any funds into the Debtor Professional Fee Escrow Account in excess of the amounts set forth in the line of the Approved Budget labeled "Professionals – Bankruptcy" for any such week and upon the earlier of (i) the Termination Declaration Date and (ii) the closing of the sale of substantially all of the Debtors' assets and properties in accordance with the terms of the DIP Documents (such date, the "**Pre-Carve Out Trigger Determination Date**"), the Debtors shall not be permitted to fund or deposit any more funds into the Professional Fee Escrow Account. The funds in the Debtor Professional Fee Escrow Account shall be held by the Debtors or an escrow agent in trust to pay the Allowed Debtor Professional Fees subject to the Approved Budget and the terms and conditions contained in the DIP Documents and this Interim Order. The DIP Lender shall retain a lien, junior and subordinate only to the Carve-Out, on the Debtor Professional Fee Escrow Account and the funds deposited therein and shall be entitled to any remaining funds after payment of the Carve-Out. Other than permitting the establishment of the Debtor Professional Fee Escrow Account in accordance with the terms and conditions contained in this Interim Order, the

DIP Lender shall have no obligations to fund or otherwise arrange for the funding of any Allowed Debtor Professional Fees.

(d) Prior to the Termination Declaration Date, the Debtors shall be permitted to pay Allowed Debtor Professional Fees up to the amounts set forth in the Approved Budget and subject to the terms and conditions contained in this Interim Order from the Debtor Professional Fee Escrow Account. Any such amounts paid prior to the Termination Declaration Date shall permanently reduce the Carve Out on a dollar-for-dollar basis.

(e) Any payment or reimbursement made either directly by the DIP Lender at any time, or by or on behalf of the Debtors on or after the Termination Declaration Date in respect of any Allowed Debtor Professional Fees prior to or after the Termination Declaration Date shall also permanently reduce the Carve-Out on a dollar-for-dollar basis. Any funding by the DIP Lender of the Carve-Out shall be added to and made a part of the DIP Obligations, secured by the Collateral, and entitle the DIP Lender to all of the rights, claims, liens, priorities and protections under this Interim Order, the applicable DIP Documents, the Bankruptcy Code and applicable law. Payment of any Carve Out Expenses, whether by or on behalf of the DIP Lender, shall not and shall not be deemed to reduce the DIP Obligations, and shall not and shall not be deemed to subordinate the DIP Lender's liens and security interests in the Collateral or its DIP Superpriority Claim to any junior pre- or post-petition lien, interest or claim in favor of any other party. For the avoidance of doubt, once the Carve-Out has been fully funded into the Debtor Professional Fee Escrow Account, the DIP Lender shall be automatically released and forever discharged from any obligations to fund the Carve Out and the DIP Liens and DIP Superpriority Claims of the DIP Lender shall no longer be subject to the Carve-Out. If any funds of the Professional Fee Escrow Account are used for any purpose other than for the payment of Allowed Professional Fees subject to, and in accordance with, the terms and conditions contained in this Interim Order, the amount of such funds so used shall nevertheless permanently reduce the amount of the Carve Out on a dollar for dollar basis.

(f) Within three (3) business days immediately following the Pre-Carve Out Trigger Determination Date, each Debtor Professional shall deliver one statement (the "**Final Statement**") setting forth the actual fees and expenses incurred by such Debtor Professional during the Pre-Trigger Date Period. To the extent that the amount in the Debtor Professional Fee Escrow Account exceeds the Final Statements delivered by each Professional on a Debtor Professional by Debtor Professional basis, the excess amount shall be returned promptly to the DIP Lender.

(g) On the Termination Declaration Date, the Carve Out Trigger Notice shall (i) constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor, to fund an amount equal to the Post-Carve Out Trigger Notice Cap into the Debtor Professional Fee Escrow and (ii) to the extent of any shortfall, deemed a request by the Debtors for DIP Loans (subject to the aggregate DIP Commitments), up to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Loans). All funds in the Professional Fee Escrow shall be used to fund the Carve-Out, until paid in full, and then, to pay the DIP Lender, until the DIP Obligations have been indefeasibly paid in full (whether in cash, by credit bid of the DIP lender, or otherwise in accordance with the DIP Documents) and all DIP Commitments have been terminated, in which case any excess shall be paid to the Prepetition Secured Lender to the extent of any outstanding Prepetition Bridge Loan Obligations. All funds advanced pursuant to this paragraph (g) (the "**Post-Carve Out Trigger Reserve**") shall be used first to pay the obligations set forth in clause (iii) of the definition of Carve-Out set forth above (the "**Post-Carve Out Amounts**"), and then, to the extent the

Post-Carve Out Trigger Reserve has not been reduced to zero, to pay the DIP Lender, until the DIP Obligations have been indefeasibly paid in full (whether in cash, by credit bid of the DIP Lender, or otherwise in accordance with the DIP Documents) and all DIP Commitments have been terminated, in which case any excess shall be paid to the Prepetition Secured Lender on account of any Prepetition Bridge Loan Obligations that remain outstanding, and then, to the extent all DIP Obligations and Prepetition Bridge Loan Obligations have been indefeasibly paid in full (whether in cash, by credit bid of the applicable lender, or otherwise in accordance with the DIP Documents or the Prepetition Loan Documents, as applicable), any excess shall be paid to the Debtors' estates.

(h) No Direct Obligation To Pay Allowed Debtor Professional Fees. Neither the DIP Lender nor the Prepetition Secured Lender shall be responsible for the payment or reimbursement of any fees or disbursements of any Debtor Professional incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender or the Prepetition Secured Lender, in any way, to pay compensation to, or to reimburse expenses of, any Debtor Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

5. *DIP Superpriority Claims*. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations (including, for the avoidance of doubt, the DIP Roll-Up Loans), shall constitute allowed superpriority administrative expense claims (the "**DIP Superpriority Claims**") against the Debtors on a joint and several basis (without the need for the DIP Lender to file any proof of claim in the Chapter 11 Cases) with priority over any and all claims against the Debtors (but for the avoidance of doubt, subject to the Carve-Out to the extent set forth in this Interim Order), now existing or hereafter arising, of any kind whatsoever, including, without limitation,

all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations (defined below)), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The DIP Superpriority Claims shall be payable from, and have recourse to, all prepetition and postpetition property of the Debtors and all proceeds thereof, including proceeds or property recovered, whether by judgment, settlement or otherwise ("**Avoidance Proceeds**") as a result of any claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, the "**Avoidance Actions**"), but excluding the Debtor Professional Fee Escrow Account and amounts held therein other than the Debtors' reversionary interest therein. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

6. *DIP Liens*. As security for the DIP Obligations, effective and automatically properly perfected on the date this Interim Order is entered, and without the necessity of execution, recordation or filing of any perfection document or instrument, or the possession or control by the DIP Lender of, or over, any Collateral (as defined under the DIP Credit Agreement), without any further action by the DIP Lender, the following valid, binding, continuing, fully perfected, enforceable and non-avoidable security interests and liens (the "**DIP Liens**") are hereby granted to the DIP Lender (all property identified in clauses (a) through (c) below being collectively referred to as the "**DIP Collateral**," and, together with the Prepetition Collateral, the "**Collateral**"):

(a) *Liens on Unencumbered Property*. Pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority lien on and security interest in (subject only to the Carve-Out to the extent set forth in this Interim Order) all tangible and intangible prepetition and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to a Prepetition Permitted Lien (collectively, the "**Unencumbered Property**").

(b) *Liens Priming the Prepetition Secured Lender's Liens and the Liens of Timothy Clarkson*. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest (subject to the Carve-Out to the extent set forth in this Interim Order) in, and lien upon, all tangible and intangible prepetition and postpetition property of the Debtors of the same nature, scope, and type as the Prepetition Collateral (the "**DIP Priming Liens**"). Notwithstanding anything herein to the contrary, the DIP Priming Liens shall be (A) senior in all respects to the Prepetition Liens on the Prepetition Collateral as well as any and all liens in favor of Timothy Clarkson on the Collateral (the "**Clarkson Liens**"), (B) senior to any Adequate Protection Liens on the Collateral and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. The Prepetition Liens and the Clarkson Liens shall be primed by and made subject and subordinate to the DIP Priming Liens.

(c) *Liens Junior to Certain Other Liens*. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all tangible and intangible prepetition and postpetition property of the Debtors that, on or as of the Petition Date, is subject to any Prepetition Permitted Liens (other than the Clarkson Liens), which shall be immediately junior and subordinate to any such Prepetition Permitted Liens.

(d) *No Senior Liens.* The DIP Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors or their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this Interim Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, or (C) any intercompany liens; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

7. *Protection of DIP Lender's and Prepetition Secured Lender's Rights.*

(a) The Debtors shall at all times comply with the Approved Budget, subject to the Permitted Variances (as defined below). Commencing on Friday, November 22, and on every other Friday thereafter, or the successive business day if such Friday is not a business day, a "**Variance Report Date**"), the Debtors shall deliver by email to the DIP Lender a variance report (each, a "**Variance Report**") for the immediately preceding two-week Variance Period (as defined below), comparing, in each case not to exceed the greater of ten percent (10%) or $40,000 (the "**Permitted Variance**"), (i) the actual aggregate operating cash flow for such Variance Period (without consideration of Professional Fees, as defined in the DIP Credit Agreement) to the projected aggregate operating cash flow for such Variance Period and (ii) the actual aggregate cumulative cash disbursements with respect to Professional Fees for such Variance Period to the projected cash disbursement with respect to Professional Fees for such Variance Period, and in each case, set forth in the Approved Budget for such two-week look-back period (each such period, a "**Variance Period**"). For clarity, the Permitted Variances do not increase in any way the DIP Commitments or increase the amount of the DIP Facility.

(b) The Debtors shall provide counsel to the Prepetition Secured Lender with all reporting and other information required to be provided to the DIP Lender under the DIP Documents. In addition to, and without limitation, whatever rights to access the DIP Lender has under the DIP Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall permit representatives, agents and employees of the DIP Lender to (i) have access to and inspect the Debtors' assets, (ii) visit and inspect any of the Debtors' respective properties, to tour the Debtors' business premises and other properties, to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors, (iii) examine the Debtors' books and records, and (iv) discuss the Debtors' affairs, finances and condition with the Debtors' officers and financial advisors.

(c) The automatic stay of section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the Debtors, the DIP Lender and the Prepetition Secured Lender to accomplish the transactions contemplated by this Interim Order.

8. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve-Out, no costs or expenses of administration of these Chapter 11 Cases or any Successor Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceeding under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral or Prepetition Collateral (in each case, including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent

of the DIP Lender and the Prepetition Secured Lender, and no consent shall be implied from any action, inaction or acquiescence by any of the DIP Lender or Prepetition Secured Lender, and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Lender or Prepetition Secured Lender to any charge, lien, assessment or claims against the Collateral under section 506(c) of the Bankruptcy Code or otherwise; *provided* that the foregoing shall be without prejudice with respect to the Prepetition Collateral of the Prepetition Secured Lender, to the terms of the Final Order with respect to the period from and after the entry of the Final Order.

9. *No Marshaling*. In no event shall the DIP Lender or the Prepetition Secured Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, the Prepetition Bridge Loan Obligations, or the Prepetition Collateral, as applicable. Further, in no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the Prepetition Secured Lender; *provided* that the foregoing shall be without prejudice with respect to the Prepetition Collateral of the Prepetition Secured Lender, to the terms of the Final Order with respect to the period from and after the entry of the Final Order.

10. *Payments Free and Clear*. Any and all payments or proceeds remitted to the DIP Lender or Prepetition Secured Lender pursuant to the provisions of this Interim Order, the DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by through or on behalf of the Debtors.

11. *Use of Cash Collateral*. The Debtors are hereby authorized, solely on the terms and conditions of this Interim Order, to use Cash Collateral in accordance with the DIP Documents and Approved Budget (subject to the Permitted Variances).

12. *Adequate Protection of Prepetition Secured Lender*. Pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, as adequate protection of the Prepetition Secured Lender's interests in the Prepetition Collateral (including Cash Collateral) for the aggregate Diminution in Value and as an inducement to consent to the priming of the Prepetition Liens, the use of its Cash Collateral and the imposition of the Carve-Out, the Prepetition Secured Lender is granted the following Adequate Protections (collectively, the "**Adequate Protection Obligations**") with respect to any Prepetition Bridge Loan Obligations that are not rolled up and converted on an irrevocable basis into the DIP Obligations or indefeasibly paid in full (whether in cash, credit bid by the Prepetition Secured Lender, or otherwise in accordance with the terms of the Prepetition Loan Documents) and are no longer subject to Challenge:

(a) *Adequate Protection Liens*. The Prepetition Secured Lender is hereby granted, effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid, perfected replacement security interest in and lien on account of the Prepetition Secured Lender's Diminution in Value upon all of the DIP Collateral (the "**Adequate Protection Liens**"), subject and subordinate to (A) the DIP Liens, (B) the Prepetition Permitted Liens, if any (other than the Clarkson Liens), and (C) the Carve-Out.

(b) *Prepetition Secured Lender's Adequate Protection Superpriority Claim*. The Prepetition Secured Lender is hereby granted an allowed superpriority administrative expense claim against the Debtors on a joint and several basis (without the need to file any proof of claim) on account of the Prepetition Secured Lender's Diminution in Value under section 507(b) of the Bankruptcy Code (the "**Adequate Protection Superpriority Claim**") which Adequate Protection Superpriority Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof. The Adequate Protection Superpriority Claim shall be subject and subordinate only to (i) the Carve-Out and (ii) the DIP Superpriority Claims.

(c) *Prepetition Secured Lender Fees and Expenses*. As further adequate protection, the DIP Loan Parties shall pay to the Prepetition Secured Lender, in cash, all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the Prepetition Secured Lender's advisors, including, without limitation, those of Morgan, Lewis & Bockius LLP (collectively, the "**Adequate Protection Fees and Expenses**"), subject (with regard to any fees incurred after the Petition Date) to the review procedures set forth in paragraph 2(c)(iv) of this Interim Order, which Adequate Protection Fees and Expenses shall accrue and be payable on the Maturity Date at the Default Rate (as defined in the Prepetition Rescue Credit Agreement as in effect on the Petition Date);

(d) *Postpetition Interest Payments*. From and after entry of this Interim Order, the Prepetition Secured Lender shall receive cash payments during the Chapter 11 Cases of all accrued interest on the outstanding Prepetition Bridge Loan Obligations payable on the Maturity Date at the Default Rate (as defined in the Prepetition Rescue Credit Agreement as in effect on the Petition Date).

13. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) Without in any way limiting the validity of the automatic perfection of the DIP Liens and the Adequate Protection Liens under the terms of this Interim Order, the DIP Lender and the Prepetition Secured Lender are hereby authorized, but not required, to execute in the name of the Debtors or the Prepetition Loan Parties (as applicable), as their true and lawful attorneys (with full power of substitution, to the maximum extent permitted by law) and to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar perfection instruments in any jurisdiction, or take possession of certificated securities, or take any other similar action in a manner not inconsistent herewith to document, validate or perfect the liens and security interests granted to them hereunder (the "**Perfection Actions**"). All such Perfection Actions shall be deemed to have been taken on the date of entry of this Interim Order. The automatic stay shall be modified to the extent necessary to permit the DIP Lender and the Prepetition Secured Lender to take any Perfection Action. For the avoidance of doubt, the DIP Liens and the Adequate Protection Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute or subordination, at the time and on the date of entry of this Interim Order, whether or not the DIP Lender or the Prepetition Secured Lender take such Perfection Actions.

(b) A certified copy of this Interim Order may, in the discretion of the DIP Lender or the Prepetition Secured Lender, be filed or recorded in the filing or recording offices in addition to or in lieu of any financing statements, mortgages, notices of lien or similar instruments, and all filing and recording offices are hereby authorized and directed to accept a certified copy of this Interim Order for filing and/or recording, as applicable.

14. *Preservation of Rights Under this Interim Order.*

(a) Other than the claims and liens expressly granted or permitted by this Interim Order, including the Carve-Out, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in or permitted under this Interim Order, the DIP Liens and the Adequate Protection Liens shall not be: (i) junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with the Clarkson Liens; (iv) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors; or (v) junior to any intercompany liens or security interests of the Debtors.

(b) No rights, protections or remedies of the DIP Lender or the Prepetition Secured Lender granted by this Interim Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent to the Debtors' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Debtors' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.

15. All postpetition advances and other financial accommodations under the DIP Documents are made in reliance on this Interim Order, and as such, the Debtors (together with the Debtors' successors and assigns, including, without limitation, any chapter 11 trustee or chapter 7 trustee appointed in any Debtor's bankruptcy case) irrevocably waive the right to, seek at any time from this Court, or in any subsequently converted case under chapter 7 of the Bankruptcy Code, any order (other than the Final Order) which (a) authorizes the use of Collateral (including Cash

Collateral) of the Debtors or the sale, lease, or other disposition of property of any Debtor's Estate in which the DIP Lender and the Prepetition Secured Lender have a lien or security interest, except as expressly permitted hereunder or in the DIP Documents, or (b) except to the extent permitted pursuant to the terms and conditions of the DIP Documents and this Interim Order, authorizes under section 364 of the Bankruptcy Code the obtaining of credit or the incurring of indebtedness secured by a lien or security interest which is equal or senior to a lien or security interest in property in which the DIP Lender holds a lien or security interest, or which is entitled to priority administrative claim status which is equal or superior to that granted to the DIP Lender herein; unless, in each instance (i) the DIP Lender shall have given its express prior written consent with respect thereto, no such consent being implied from any other action, inaction or acquiescence by the DIP Lender, or (ii) such other order requires that all DIP Obligations shall first be indefeasibly paid and satisfied in full in accordance with the terms of the DIP Documents, including, without limitation, all debts and obligations of the Debtors to the DIP Lender and the Prepetition Secured Lender which arise or result from the obligations, loans, security interests and liens related to the DIP Loans and the Prepetition Bridge Loan Obligations, on terms and conditions acceptable to the DIP Lender. The security interests and liens granted to or for the benefit of the DIP Lender hereunder and the rights of the DIP Lender pursuant to this Interim Order and the DIP Documents are cumulative and shall not be altered, modified, extended, impaired, or affected by any plan of reorganization or liquidation of the Debtors and, if the DIP Lender shall expressly consent in writing that the DIP Obligations shall not be repaid in full upon confirmation thereof, shall continue after confirmation and consummation of any such plan.

16. [Reserved].

17. *Cash Management*. The Debtors shall maintain their cash management system consistent with the terms and conditions of any interim and/or final order granting the Debtors authorization to continue their cash management systems and certain related relief (as amended, supplemented or otherwise modified with the consent of the DIP Lender, the "**Cash Management Order**"), the DIP Documents, and this Interim Order.

18. *Maintenance of Collateral*. Until the indefeasible payment in full (whether in cash, by credit bid of the DIP Lender, or otherwise) of all DIP Obligations and all Prepetition Bridge Loan Obligations, and the termination of the DIP Commitments, the Debtors shall insure the DIP Collateral as required under the DIP Documents or the Prepetition Credit Documents, as applicable.

19. *Survival*. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or converting these Chapter 11 Cases to a Successor Case: (A) the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, the DIP Liens, the Adequate Protection Liens, and the Prepetition Liens shall continue in full force and effect, shall maintain their priorities as provided in this Interim Order, and shall remain binding on all parties in interest until all DIP Obligations, Adequate Protection Obligations and Prepetition Bridge Loan Obligations shall have been indefeasibly paid in full (whether in cash, by credit bid, or otherwise); (B) the other rights granted by this Interim Order, including with respect to the Carve-Out, shall not be affected; and (C) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Interim Order.

(a) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed (including, following a Final Hearing (as defined below)), such reversal, modification, vacatur, or stay shall not affect (i) the validity, priority, or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Lender or Prepetition Secured Lender, as applicable, of the effective date of such reversal, modification, vacatur, or stay; or (ii) the validity, priority, and enforceability of the DIP Liens, the Prepetition Liens, the Adequate Protection Liens, and the Carve-Out. Notwithstanding any such reversal, modification, vacatur or stay, the DIP Obligations, DIP Liens, Adequate Protection Obligations, Adequate Protection Liens, DIP Superpriority Claims, and the Adequate Protection Superpriority Claims incurred prior to the actual receipt of written notice by the DIP Lender or the Prepetition Secured Lender, as applicable, of the effective date of such reversal, modification, vacatur, or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender and the Prepetition Secured Lender shall be entitled to, and are hereby granted, all the rights, remedies, privileges and benefits arising under section 364(e) of the Bankruptcy Code.

(b) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Lender and the Prepetition Secured Lender granted by this Interim Order and the DIP Documents, as well as the Carve-Out, shall survive, and shall not be modified, impaired or discharged by the entry of an order (i) converting or dismissing any of these Chapter 11 Cases, or terminating the joint administration of these Chapter 11 Cases; (ii) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) confirming a chapter 11 plan in any of the Chapter 11 Cases. The terms and provisions of this Interim Order and the DIP Documents shall continue in full force and effect in these Chapter 11

Cases and in any Successor Cases until all DIP Obligations, Adequate Protection Obligations, and Prepetition Bridge Loan Obligations are indefeasibly paid in full (whether in cash, by roll up and conversion, by credit bid, or otherwise) and the DIP Commitments have been terminated.

20. *Termination Event.* On the applicable Termination Date (as defined below), all DIP Obligations shall be immediate due and payable and, all DIP Commitments under the DIP Facility will terminate.

(a) Until the DIP Obligations are indefeasibly paid in full (whether in cash, by credit bid, or otherwise) and all commitments thereunder are terminated, the occurrence of any of the following events, unless waived by the DIP Lender in writing (which may be by electronic mail) and in accordance with the terms of the DIP Documents, shall constitute an event of default (collectively, the "**Events of Default**"):

(i) the failure of the Debtors to perform or comply, in any respect, with any of the terms, provisions, conditions, covenants or obligations under this Interim Order, including, without limitation, failure to make any payment under this Interim Order when due or comply with any Milestones; and

(ii) the occurrence and continuation of any Events of Default under, and as defined in, the DIP Credit Agreement or any other DIP Documents.

(b) As a condition to the DIP Facility and the use of Cash Collateral, the Debtors have agreed to the following milestones (the "**Milestones**"):

(i) No later than three (3) business days after the Petition Date, entry by the Court of this Interim Order;

(ii) No later than ten (10) calendar days after the Petition Date, entry by the Court of an order approving the Asset Purchase Agreement and the Bidding Procedures (as defined in the DIP Credit Agreement) for the Purchased Assets;

(iii) No later than twenty-five (25) calendar days after the Petition Date, entry by the Court of the Final Order;

(iv) No later than December 11, 2024, the submission deadline for all bids for the sale of the Purchased Assets as set forth in the Bidding Procedures;

(v) No later than December 13, 2024, holding an auction (if necessary) for the sale of the Purchased Assets as set forth in the Bidding Procedures;

(vi) No later than December 20, 2024, entry by the Court of the Sale Order (as defined in the Asset Purchase Agreement); and

(vii) No later than January 2, 2025, consummation of the sale of Purchased Assets.

For the avoidance of doubt, unless waived in writing by the DIP Lender in its sole discretion, the failure of the Debtors to meet the Milestones by the applicable specified deadlines set forth herein shall constitute an Event of Default under the DIP Documents and this Interim Order.

21. *Rights and Remedies Upon Event of Default*. Upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of Bankruptcy Code section 362, without any application, motion or notice to, hearing before, or order from the Court, and subject only to the terms of this Interim Order: (a) the DIP Lender may send a written notice to the

Debtors, U.S. Trustee, and the Subchapter V Trustee (any such notice shall be referred to herein as a "**Termination Declaration**"), which shall be filed on the docket of the Chapter 11 Cases, declaring (1) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (2) the DIP Commitment of the DIP Lender to be terminated, whereupon such commitment and obligation shall be terminated to the extent any such commitment remains under the DIP Facility, (3) the termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Liens or the DIP Obligations, and (4) the application of the Carve-Out has occurred following the delivery of the Carve Out Trigger Notice to the Debtors; (b) interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Documents; and (c) upon delivery of the Termination Declaration, the DIP Lender shall be deemed to have declared a termination, reduction, or restriction on the ability of the Debtors to use Cash Collateral, other than to pay accrued and unpaid employee wage, benefit or independent contractor obligations, sales and use taxes, and payroll taxes included in the Approved Budget during the Remedies Notice Period (as defined below) unless, consented to in writing by the DIP Lender in its sole discretion. The earliest date on which a Termination Declaration is delivered by the DIP Lender and filed on the docket shall be referred to herein as the "**Termination Date**." Following a Termination Date, neither the DIP Lender nor the Prepetition Secured Lender shall be required to consent to the use of any Cash Collateral or provide any loans or other financial accommodations under the DIP Facility. The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, U.S. Trustee, and Subchapter V Trustee.

22. *Emergency Hearing*. Upon the delivery of a Termination Declaration, the Debtors, the DIP Lender, and the Prepetition Secured Lender consent to a hearing on an emergency basis

regarding, among other things, such Termination Notice. In any hearing regarding the exercise of rights or remedies (which hearing must take place during the three (3) business days following the date that a Termination Declaration is delivered (such three (3) business day period, the "**Remedies Notice Period**")), the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing. The Debtors shall not be entitled to seek relief, pursuant to section 105 of the Bankruptcy Code or otherwise, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender set forth in this Interim Order or the DIP Documents. Unless the Court has entered an order to the contrary, the Debtors' right to use Cash Collateral shall immediately cease upon expiration of the Remedies Notice Period unless otherwise provided herein and the DIP Lender shall have the rights set forth immediately below.

23. *Certain Rights and Remedies Following Termination Date*. Following the Termination Date and upon either the expiration of the Remedies Notice Period or pursuant to an order of the Court (which may authorize the remedies set forth in this paragraph or any other appropriate remedy as then determined by the Court), the DIP Lender shall be entitled to exercise all rights and remedies in accordance with the DIP Documents, the DIP Orders and applicable law and shall be permitted to satisfy the relevant DIP Obligations and DIP Liens based on the priorities set forth in the DIP Documents, subject to the Carve-Out and any Prepetition Permitted Liens (other than the Clarkson Liens), and (a) the Debtors are hereby authorized and directed to, with the exclusion of the Carve-Out (to the extent set forth in this Interim Order), remit to the DIP Lender one-hundred percent (100%) of all collections, remittances, and proceeds of the DIP Collateral in accordance with the DIP Documents; (b) the DIP Lender may compel the Debtors to seek authority to, (i) sell or otherwise dispose of all or any portion of the DIP Collateral (or any

other property of the Debtors to the extent a lien is not permitted by law to attach to such property, the proceeds of which are DIP Collateral) pursuant to section 363 of the Bankruptcy Code (or any other applicable provision) on terms and conditions pursuant to sections 363, 365, and other applicable provisions of the Bankruptcy Code, and (ii) assume and assign any lease or executory contract included in the DIP Collateral to the DIP Lender's designees in accordance with and subject to section 365 of the Bankruptcy Code, (c) the DIP Lender may direct the Debtors to (and the Debtors shall comply with such direction to) dispose of or liquidate the DIP Collateral (or any other property of the Debtors to the extent a lien is not permitted by law to attach to such property, the proceeds which are DIP Collateral) via one or more sales of such DIP Collateral or property and/or the monetization of other DIP Collateral or property, (d) the DIP Lender may, or may direct the Debtors to (and the Debtors shall comply with such direction to), collect accounts receivable, without setoff by any account debtor, (e) the DIP Lender shall be authorized to succeed to any of the Debtors' rights and interests under any licenses for the use of any intellectual property in order to complete the production and sale of any inventory with respect to the DIP Collateral, and (f) the Debtors shall take all action that is reasonably necessary to cooperate with the DIP Lender in the exercise of their rights and remedies and to facilitate the realization of the DIP Collateral by the DIP Lender as set forth in the DIP Documents.

24. *Sale Matters*. Notwithstanding Section 7.11 of the DIP Credit Agreement, the Exclusive Period shall terminate at the end of the day on November 14, 2024. From November 15, 2024, until the Bankruptcy Court's approval of the Bid Protections in favor of the DIP Lender (or its designated affiliate) set forth in the proposed Bidding Procedures, the Debtors shall (i) act in accordance with the proposed Bidding Procedures, (ii) use their reasonable best efforts to have the Bid Protections and the Bidding Procedures approved on an expedited basis in accordance with

the DIP Credit Agreement, and (iii) be prohibited from considering any bid of any form for the Debtors' assets, in whole or in part.

25. *Discharge*. Except as otherwise agreed in writing by the DIP Lender and the Prepetition Secured Lender, the DIP Obligations and the Adequate Protection Obligations of the Debtors shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full (whether in cash, by credit bid of the DIP Lender, or otherwise) on or before the effective date of such confirmed plan of reorganization. If any of the Debtors propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment (including by credit bid) of the DIP Obligations, the Prepetition Bridge Loan Obligations, and the payment of the Debtors' Adequate Protection Obligations, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) (a "**Prohibited Plan or Sale**") without the written consent of the DIP Lender and the Prepetition Secured Lender, the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default hereunder.

26. *Effect of Stipulations on Third Parties*. The Debtors' stipulations, admissions, agreements and releases contained in Paragraph F of this Interim Order shall be binding upon the Debtors in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in Paragraph F of this Interim Order shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases and any other person or entity acting or seeking to

act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless: (a) such committee or other party in interest with requisite standing has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein) by no later than one business day before the hearing approving a sale of all or substantially all of the Debtors' assets (such time period, the "**Challenge Period**"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Bridge Loan Obligations or the Prepetition Liens, or (B) asserting or prosecuting any Avoidance Action or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "**Challenges**") against the Prepetition Secured Lender (i.e., TOG and URUS) or its respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (collectively, the "**Representatives**") in connection with or related to the Prepetition Loan Documents, the Prepetition Bridge Loan Obligations, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge; *provided*, *however*, that any pleadings filed in connection with a Challenge shall set forth with specificity the basis for such Challenge and any Challenges not so specified prior to the expiration of the Challenge Period shall be deemed forever waived, released and barred. If no Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such Challenge then: (1) the Debtors' stipulations, admissions, agreements and releases contained in this Interim Order shall be binding on all parties in interest; (2) the obligations of the Prepetition Loan Parties under the Prepetition Loan Documents shall constitute allowed claims not subject to defense avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for all purposes in these Chapter 11 Cases and any Successor Case(s); (3) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity, including any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any chapter 7 or chapter 11 trustee or examiner, and any defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any chapter 7 or chapter 11 trustee or examiner, whether arising under the Bankruptcy Code or otherwise, against the Prepetition Secured Lender and its Representatives shall be deemed forever waived, released and barred. If any Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in Paragraph F of this Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on each person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any person or entity (each as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Loan Documents, Prepetition Bridge Loan Obligations or Prepetition Liens, and any ruling on standing, if appealed, shall not stay or otherwise delay any sale of the Debtors' assets and the payment of the DIP Obligations (including any and all Prepetition Bridge Loan Obligations rolled up and converted into DIP Obligations) in connection therewith, or confirmation of any plan of reorganization in these Chapter 11 Cases.

27. *Limitation on Use of DIP Financing Proceeds and Collateral.* Notwithstanding any other provision of this Interim Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral (including Cash Collateral) or any portion of the Carve-Out, may be used directly or indirectly, including without limitation through reimbursement of professional fees, in connection with (a) the investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against the DIP Lender, or the Prepetition Secured Lender, or their respective Representatives (in their capacities as such), or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Bridge Loan Obligations, Prepetition Liens, Adequate Protection Liens, or Adequate Protection Superpriority Claims or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the Prepetition Bridge Loan Obligations and/or liens, claims, rights, or security interests securing or supporting the DIP Obligations granted under the DIP Order, the

DIP Documents or the Prepetition Loan Documents in respect of the Prepetition Bridge Loan Obligations, including, in the case of each of (i) and (ii), without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code or applicable non-bankruptcy law (b) attempts to prevent, hinder, or otherwise delay or interfere with the Prepetition Secured Lender's or the DIP Lender's, as applicable, enforcement or realization on the Prepetition Bridge Loan Obligations, Prepetition Collateral, DIP Obligations, DIP Collateral, as applicable, and the liens, claims and rights granted to such parties under the DIP Order; (c) attempts to seek to modify any of the rights and remedies granted to the Prepetition Secured Lender or the DIP Lender under this Interim Order, the Prepetition Loan Documents or the DIP Documents, as applicable, other than in accordance with this Interim Order; (d) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens and claims permitted by the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and Adequate Protection Superpriority Claims; or (e) to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are authorized by the Court, agreed to in writing by the DIP Lender, expressly permitted under this Interim Order or under the DIP Documents (including the Approved Budget, subject to Permitted Variances), in each case unless all DIP Obligations, Prepetition Bridge Loan Obligations, Adequate Protection Obligations, and claims granted to the DIP Lender and Prepetition Secured Lender under this Interim Order, have been indefeasibly paid in full in cash or otherwise agreed to in writing by the DIP Lender and the Prepetition Secured Lender, as applicable.

28. *Interim Order Governs*. In the event of any inconsistency between the provisions of this Interim Order, the DIP Documents or Prepetition Loan Documents, the provisions of this

Interim Order shall govern. Any authorization contained in any other order (including, but not limited to, any "first day orders") entered by this Court shall be consistent with and subject to the requirements set forth in this Interim Order and the DIP Documents, including, without limitation, the Approved Budget (subject to the Permitted Variances).

29. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Lender, the Prepetition Secured Lender, any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Lender, the Prepetition Secured Lender, the Debtors, and their respective successors and assigns; *provided* that the DIP Lender and the Prepetition Secured Lender shall have no obligation to permit the use of Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee or chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

30. Nothing in this Interim Order, the DIP Documents, the Prepetition Loan Documents or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or the Prepetition Secured Lender of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. The DIP Lender and Prepetition Secured Lender shall not, in any way or manner, be liable or

responsible for (i) the safekeeping of the DIP Collateral or Prepetition Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of the DIP Collateral or Prepetition Collateral shall be borne by the Debtors.

31. *Limitation of Liability*. In determining to make any loan or other extension of credit under the DIP Documents, to permit the use of the DIP Collateral or Prepetition Collateral (including Cash Collateral) or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents or Prepetition Loan Documents, as applicable, none of the DIP Lender or Prepetition Secured Lender shall (a) have any liability to any third party or be deemed to be in "control" of the operations of the Debtors; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (c) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" or "managing agent" with respect to the operation or management of any of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any other federal or state statute, including the Internal Revenue Code). Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or Prepetition Secured Lender of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective Representatives.

32. *Proofs of Claim*. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of these Chapter 11 Cases or any Successor Cases, the Prepetition Secured Lender shall not be required to file proofs of claim in these Chapter 11 Cases or any

Successor Cases in order to assert claims for payment of any of the Prepetition Bridge Loan Obligations, including, without limitation, any principal, unpaid interest, fees, expenses and other amounts payable under the Prepetition Loan Documents or this Interim Order. The Debtors' stipulations, admissions and acknowledgments of the claim and liens in respect of the Prepetition Bridge Loan Obligations set forth in this Interim Order are deemed to constitute timely proofs of claim in respect of all indebtedness, secured status and claims arising under the Prepetition Loan Documents and this Interim Order. The provisions of this paragraph 32 are intended solely for the purpose of administrative convenience and shall not affect the right of the Prepetition Secured Lender (or its successors in interest) to vote on any plan filed in these Chapter 11 Cases. The DIP Lender shall not be required to file proofs of claim with respect to the DIP Obligations in these Chapter 11 Cases or any Successor Cases.

33. *Insurance*. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Lender shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

34. *Allocation and Payment of All Sale Proceeds to TOG to Pay DIP Obligations and Prepetition Bridge Loan Obligations*. In connection with any sale or other disposition of the Debtors' or their estates' assets, including any sales occurring under or pursuant to section 363 of the Bankruptcy Code, any plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or a sale or disposition by a chapter 7 trustee for any of the Debtors under section 725 of the Bankruptcy Code (any of the foregoing sales or dispositions, a "**Sale**"), all proceeds from any such Sale shall be paid over to the DIP Lender first to repay the DIP Obligations in full and thereafter to pay the Adequate Protection Obligations and Prepetition Bridge Loan

Obligations (if such obligations have not been rolled up and converted on an irrevocable basis into the DIP Obligations and no longer subject to Challenge) after which the residual sale proceeds, if any, shall be held by the Debtors or the chapter 7 trustee (if appointed) until further order of the Court.

35. *Preservation of 363(k) Rights*. For the avoidance of doubt, the Prepetition Secured Lender and the DIP Lender, in their capacity as a pre-petition secured lender and/or post-petition secured lender, shall have the right to "credit bid" up to the full amount of the DIP Obligations, (including, without duplication, any Prepetition Bridge Loan Obligations rolled up and converted into the DIP Obligations hereunder) and, to the extent applicable, the Prepetition Bridge Loan Obligations, pursuant to section 363(k) of the Bankruptcy Code during any sale of all or substantially all of the Debtors' assets, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code. The Prepetition Secured Lender and the DIP Lender shall be considered "Qualified Bidders" under the Sale Motion and any other bid procedures motion with respect to their rights to acquire all and any of the Debtors' and their estates' assets by credit bid and shall not be required to post a good faith deposit in connection with such sale. The Prepetition Secured Lender and the DIP Lender also shall have the right, but no obligation, to supplement their credit bids with additional cash consideration such that the amount of additional cash plus the credit bid is the amount of the Prepetition Secured Lender and/or the DIP Lender's subsequent bid. The Prepetition Secured Lender and the DIP Lender shall have the absolute right to assign, transfer, sell, or otherwise dispose of its rights to credit bid as set forth in this paragraph to any acquisition vehicle formed in connection with such credit bid or other designee.

36. *Effectiveness*. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any Local Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

37. *Headings*. Paragraph headings used herein are for convenience only and shall not affect the construction of, or to be taken into consideration in interpreting, this Interim Order.

38. *Payments Held in Trust*. Except as expressly permitted in this Interim Order or the DIP Documents and except with respect to the Debtors, in the event that any person or entity receives any payment on account of a security interest in the DIP Collateral, receives any DIP Collateral or any proceeds of the DIP Collateral or receives any other payment with respect thereto from any other source prior to indefeasible payment in full of all DIP Obligations and termination of all DIP Commitments, such person or entity shall be deemed to have received, and shall hold, any such DIP Collateral or any payment on account or proceeds thereof in trust for the benefit of the DIP Lender and shall immediately turn over such collateral or its proceeds to the DIP Lender, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Interim Order.

39. *Bankruptcy Rules*. The requirements of Bankruptcy Rules 4001, 6003 and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

40. *No Third Party Rights*. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary.

41. *Necessary Action*. The Debtors, the DIP Lender and the Prepetition Secured Lender are authorized to take all reasonable actions as are necessary or appropriate to implement the terms

of this Interim Order. The automatic stay is modified to permit affiliates of the Debtors who are not debtors in these cases to take all actions as are necessary or appropriate to implement the terms of this Interim Order.

42. *Retention of Jurisdiction*. This Court shall retain jurisdiction to enforce the provisions of this Interim Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

43. *Hearing on Bid Procedures*. A hearing to consider the Bidding Procedures and the Bid Protections shall be held on [November __, 2024 at _:__ p.m.] (Prevailing Eastern Time).

44. *Final Hearing*. A final hearing to consider the relief requested in the Motion on a final basis shall be held on [December __, 2024 at _:__ p.m.] (Prevailing Eastern Time).

45. *Objections*. Any objections or responses to the Motion shall be filed on or prior to [November __, 2024] at 4:00 p.m. (Prevailing Eastern Time). Any party objecting to the relief sought at the Final Hearing shall file and serve (via mail and e-mail) written objections, which objections shall be served upon (a) the Debtors, (b) counsel to the Debtors; (c) counsel to the DIP Lender and Prepetition Secured Lender, Morgan, Lewis & Bockius LLP, 101 Park Ave., New York, NY 10178, Attn: Jennifer Feldsher and Jon M. English, (c) the Office of the United States Trustee for the District of Delaware; and (d) the Subchapter V Trustee.

46. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) on the Notice Parties and to any other party that has filed with this Court a request for notices in these Chapter 11 Cases.

<u>EXHIBIT B</u>

DIP Credit Agreement

SUPERPRIORITY DEBTOR IN POSSESSION LOAN AND SECURITY AGREEMENT

THIS SUPERPRIORITY DEBTOR IN POSSESSION LOAN AND SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "**Agreement**") is entered into as of November ____, 2024 ("**Effective Date**"), among TOG TECHNOLOGIES, LLC, a Delaware limited liability company (together with its successors and assigns, "**Lender**"), RECOMBINETICS, INC., a Delaware corporation ("**Recombinetics**" or "**Lead Borrower**"), 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 Recombinetics, Acceligen, Regenevida, and Surrogen, each, a "**Borrower**" and collectively, the "**Borrowers**").

RECITALS

On November 11, 2024 (the "**Petition Date"**), the Borrowers commenced voluntary chapter 11 cases under subchapter V of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), which cases have been consolidated for procedural purposes under the lead case *In re Recombinetics, Inc.*, Case No. 24–12593 (collectively, the "**Cases**" and each individually, a "**Case**"). The Borrowers continue to operate their business and manage their properties as debtors and debtors-in-possession pursuant to section 1184 of the Bankruptcy Code.

Prior to the Petition Date, Recombinetics and Acceligen (the "**Prepetition Borrowers**") entered into the Prepetition Facility to provide the Prepetition Borrowers with liquidity to preserve their operations and prepare for the commencement of the Cases. The Prepetition Facility comprised (a) that certain Loan and Security Agreement, dated as of October 3, 2024 (the "**Initial Prepetition Rescue Financing Agreement**" and as amended by the First Amendment (as defined below), the "**Prepetition Rescue Financing Agreement**"; capitalized terms used herein but not defined herein shall have the meanings given to such term in the Prepetition Rescue Financing Agreement), among URUS Group, LP, a Delaware limited partnership (the "**Prior Lender**") and the Prepetition Borrowers and (b) that certain First Amendment to Loan and Security Agreement, dated as of October 28, 2024, by and between the Prior Lender, Lender, and the Prepetition Borrowers (the "**First Amendment**").

Pursuant to the First Amendment, the Prior Lender assigned all of its rights and obligations under the Initial Prepetition Rescue Financing Agreement to the Lender and the Lender provided additional financing to the Prepetition Borrowers for operational, legal, and other expenses in contemplation of the commencement of the Cases.

As of the Effective Date, the Lender was owed $[1,820,877.95][1] in outstanding Prepetition Obligations under the Prepetition Rescue Financing Agreement.

The Prepetition Obligations under the Prepetition Rescue Financing Agreement are secured by a security interest in substantially all of the existing and after-acquired assets of the Prepetition Borrowers as set forth in the Prepetition Rescue Financing Agreement, and such security interest is perfected, and, with certain exceptions as described in the Prepetition Rescue Financing Agreement, has priority over all other security interests.

The Borrowers have requested, and, upon the terms and subject to the conditions set forth in this Agreement, the Lender has agreed to extend credit to the Borrowers in the form of a secured term loan

[1] [NTD: Bracketed amounts to be updated if Interim Order entered after 11/12/24.]

credit facility in an aggregate principal amount of $[3,659,635.51][2] (which amount includes the roll-up and refinancing of the Prepetition Obligations outstanding on the Effective Date), to fund the working capital requirements of the Borrowers during the pendency of the Cases and the Carve-Out, in each case, pursuant to and in accordance with the DIP Budget.

NOW, THEREFORE, the parties hereto, in consideration of the premises and their mutual covenants and agreements herein set forth, and intending to be legally bound hereby, covenant and agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

Section 1.1 **Certain Definitions**. Capitalized terms used herein but not otherwise defined herein shall have the meanings defined in the UCC (as defined below). As used herein, the following terms have the meanings indicated:

(1) "**Cash Flow Projections**" has the meaning assigned in Section 6.1.

(2) **"Acceptable Security Interest**" shall mean a security interest which (a) exists in favor of Lender, (b) is superior to all other security interests (other than the Carve-Out and the Prepetition Permitted Liens), (c) secures the Obligations, (d) is enforceable against the Borrower which created such security interest and (d) is, proposed or intended to be, perfected.

(3) "**Adequate Protection Liens**" has the meaning specified in the DIP Orders.

(4) "**Adequate Protection Superpriority Claim**" has the meaning set forth in the Interim DIP Order or, upon entry of the Final DIP Order, in the Final DIP Order, as applicable.

(5) "**Affiliate**" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified.

(6) "**Agreement**" has the meaning given to such term in the introductory paragraph herein.

(7) "**Allowed Debtor Professional Fees**" has the meaning set forth in the DIP Orders.

(8) "**Anti-Money Laundering Measures**" has the meaning assigned in Section 4.10(2).

(9) "**Anti-Terrorism Laws**" has the meaning assigned in Section 4.10(1).

(10) "**Applicable Law**" means, as to any Person, all applicable international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, direct duties, requests, licenses, authorizations and Permits of, and

[2] [NTD: Bracketed amounts to be updated if Interim Order entered after 11/12/24.]

agreements with, any Governmental Authority, in each case binding upon such Person or its properties or to which such Person is subject and whether or not having the force of law.

(11) "**Assignee**" has the meaning assigned to it in Section 11.24(2).

(12) "**Asset Disposition**" means any sale, lease, license, transfer, assignment, statutory division or other consensual disposition by a Borrower of any asset.

(13) "**Asset Purchase Agreement**" means that certain Asset Purchase Agreement, dated as of November 8, 2024, by and among RCI, Acceligen, Regenevida, Surrogen and Therillume, each as a seller thereunder, and TOG Technologies, LLC, as buyer.

(14) "**Authority Documents**" means the following: (i) a certificate of good standing (or equivalent) from the Borrowers' jurisdiction of organization; (ii) a copy of the Borrowers' articles of organization or other applicable document; (iii) a copy of the Borrowers' operating agreement or other applicable agreement; and (iv) a consent in form and content satisfactory to Lender, authorizing each Borrower to execute the Loan Documents to which it is a party.

(15) "**Automatic Stay**" means the automatic stay imposed under section 362 of the Bankruptcy Code.

(16) "**Bankruptcy Code**" means title 11 of the United States Code, as amended from time to time and any successor statute or any similar federal or state law for the relief of debtors.

(17) "**Bankruptcy Court**" has the meaning assigned in the Recitals.

(18) "**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure as now and hereafter in effect, or any successor statute.

(19) "**Bidding Procedures**" means bidding procedures in connection with the sale as contemplated under the Asset Purchase Agreement, which shall be in form and substance reasonably acceptable to Lender.

(20) "**Bidding Procedures Order**" has the meaning assigned in Section 7.9(3)(b).

(21) "**Borrower Financial Advisor**" means, as the context may require, each of Teneo Capital LLC, in its capacity as a financial advisor retained by the Borrowers to advise on cash management and reporting and/or Cassel Salpeter & Co., in its capacity as investment advisor retained by the Borrowers to manage the process for, and consummate, a Sale Transaction.

(22) "**Borrowing**" means a borrowing consisting of simultaneous Loans made by Lender.

(23) "**BSA**" has the meaning assigned in Section 4.10(2).

(24) "**Business Day**" means a day other than a Saturday, a Sunday, or a legal holiday on which national banks located in the State of New York are not open for general banking business.

(25) "**Capital Stock**" means any and all shares, interests, participations, units or other equivalents (however designated) of capital stock of a corporation, membership interests in a limited

liability company, partnership interests of a limited partnership, any and all equivalent ownership interests in a Person and any and all warrants, rights or options to purchase any of the foregoing.

(26) "**Carve-Out**" has the meaning assigned in the DIP Orders.

(27) "**Carve-Out Trigger Notice**" has the meaning assigned in the DIP Orders.

(28) "**Case**" has the meaning assigned in the Recitals.

(29) "**Cash Management Order**" has the meaning assigned in Section 3.1(9).

(30) "**Change of Control**" means:

(a) any person or group of persons (within the meaning of Section 13(d) or 14(a) of the Exchange Act) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC under the Exchange Act) of thirty-five percent (35%) or more of the voting Equity Interests of the Lead Borrower;

(b) any person or group of persons shall have acquired, by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, control over the Equity Interests of such persons entitled to vote for members of the board of directors of the Lead Borrower (on a fully diluted basis and taking into account all such Equity Interests that such person or group of persons has the right to acquire pursuant to any option right) representing thirty-five percent (35%) or more of the combined voting power of such Equity Interests; or

(c) except pursuant to a transaction permitted hereunder, the failure of any Borrower to beneficially own, directly or indirectly (on a fully diluted basis), one hundred percent (100%) of the voting Equity Interests of any of its Subsidiaries;

(31) "**Collateral**" shall include the following properties, assets and rights of the Borrowers, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, in each case, to the extent of the Borrowers' right, title or interest therein:

(a) all Accounts;

(b) all Chattel Paper (whether tangible or electronic);

(c) all Contracts and contract rights;

(d) all Deposit Accounts, Securities Accounts, cash, cash equivalents and money;

(e) all Documents;

(f) all Equipment;

(g) all Fixtures;

(h) all Equity Interests;

(i) all General Intangibles (including, without limitation, all Payment Intangibles);

(j) all Instruments (including, without limitation, Promissory Notes);

(k) all Intellectual Property;

(l) all Inventory;

(m) all Investment Property;

(n) all IP Licenses;

(o) all letters of credit documents and Letter-of-Credit Rights;

(p) all Goods and other property not otherwise described above (except for any property specifically excluded from any clause in this section above, and any property specifically excluded from any defined term used in any clause of this section above);

(q) all income, royalties, proceeds and liabilities at any time due or payable or asserted under or with respect to any Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution or violation of any Intellectual Property;

(r) all tax refunds;

(s) all documents of title;

(t) all books and records pertaining to the Collateral;

(u) all Commercial Tort Claims;

(v) to the extent not otherwise included, all Proceeds, including all Cash Proceeds and Noncash Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing;

(w) to the extent not covered by clauses (a) through (u) of this definition, all other assets, personal property and rights of the Borrowers, whether tangible or intangible; and

(x) the Borrowers' rights under any agreement, including without limitation, the Borrowers' rights to claim a reversionary interest in any Intellectual Property pursuant to an underlying agreement;

provided, that, notwithstanding anything to the contrary in this Agreement, the Collateral shall not include, and no security interest shall be granted in the Excluded Assets, except that such exclusion shall not in any way limit, impair or otherwise affect Lender's continuing security interest upon any rights or interests of the Borrowers in or to (x) monies due or to become due in respect of the Excluded Assets or (y) any and all proceeds from the sale, transfer, assignment, license, franchise, lease or other disposition of the Excluded

Assets, in each case, to the extent that such monies and proceeds are not themselves part of the Excluded Assets.

(32) "**Commitment**" means the Lender's New Money Delayed Draw Commitment and the Lender's Roll Up Commitment or any combination thereof.

(33) "**Competing Transaction**" has the meaning assigned to it in Section 7.7.

(34) "**Contract Rate**" means thirteen percent (13.00%) per annum.

(35) "**Control Agreement**" means, with respect to each deposit account, securities account and commodities account of a Borrower, a control agreement that establishes control by the Lender over such accounts in accordance with Section 9.104 of the UCC, among Lender, such Borrower and the applicable depository institution, in form and substance acceptable to Lender.

(36) "**Copyright Licenses**" means any written agreement naming a Borrower as licensor or licensee, granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

(37) "**Copyrights**" means, with respect to each Borrower, (a) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, and (b) the right to obtain all renewals thereof.

(38) "**Debt**" means, for any Person, without duplication and limitation: (a) all indebtedness of such Person for borrowed money or for amounts drawn under a letter of credit, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to members (or other equity holders) or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all guaranties of Debt, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase, to provide funds for payment of Debt, to supply funds to invest in any Person or entity, or otherwise to assure a creditor against loss, (e) all obligations under leases that constitute capital leases for which such Person is liable, (f) obligations evidenced by bonds, debentures, notes, or other similar instruments, (g) obligations for the deferred purchase price of property or services (including trade obligations), (h) obligations under acceptance facilities, (i) obligations secured by any Liens granted by such Person, whether or not the obligations have been assumed, (j) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss and/or (k) any other items which would properly be included in the liability section of a balance sheet or in a footnote to a financial statement in accordance with GAAP, and shall also include all contingent liabilities.

(39) "**Debtor Professional Fee Escrow**" has the meaning assigned in the DIP Orders.

(40) "**Default**" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

(41) "**Default Rate**" means, the lesser of (a) the Maximum Rate and (b) two percent (2.00%) per annum in excess of the Contract Rate.

(42) "**Designated Person**" has the meaning assigned in Section 4.10(1).

(43) "**DIP Budget**" means the 8-week cash flow budget of anticipated and forecasted revenues and expenses and, as in effect from time to time, in form and substance satisfactory to Lender in its sole discretion, including the Initial DIP Budget, as the same may be updated from time to time by the Borrowers with the consent of Lender in its sole discretion. Any reference contained herein to compliance with the DIP Budget shall include the variance permitted by Section 7.10.

(44) "**DIP Liens**" means an Acceptable Security Interest in the Collateral granted to Lender pursuant to this Agreement, the other Loan Documents and the DIP Orders.

(45) "**DIP Orders**" shall mean the Interim DIP Order and/or the Final DIP Order, as in effect at such time and as the context may require, and any amendment, modification or supplement thereto, in each case, in form and substance acceptable to Lender in its sole discretion.

(46) "**Effective Date**" has the meaning assigned in the introductory paragraph of this Agreement.

(47) "**Equity Interests**" means (a) all shares of Capital Stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting and (b) all securities convertible into or exchangeable for any of the foregoing and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any of the foregoing, whether or not presently convertible, exchangeable or exercisable.

(48) "**Event of Default**" has the meaning assigned in Article 8.

(49) "**Excluded Assets**" means, collectively, (i) [reserved], (ii) any of such Borrowers' right, title or interest in any lease, license, contract, property right or agreement to which such Borrower is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the express terms of such lease, license, contract or agreement result in a breach of the terms of, or constitute a default under, such lease, license, contract or agreement, (iii) any property of a Borrower to the extent and for so long as the grant of a security interest pursuant to this Agreement in such Borrower's right, title or interest therein is prohibited by any Applicable Law, and (iv) any "intent-to-use" application for registration of a trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law; provided that such security interest shall attach immediately and automatically when such prohibition, termination right or consent requirement is repealed, rescinded or otherwise ceases to be effective, when such consent is obtained, or such filing has been made; provided, however, that (I) Excluded Assets shall not include any Proceeds of property described above (unless such Proceeds would otherwise constitute Excluded Assets), (II) any Excluded Asset that ceases to be an Excluded Asset shall automatically, without the action of any other Person, become Collateral and (III) notwithstanding this definition, any asset or property of any Borrower that is not an "Excluded Asset" under the Existing Bridge Loan and Security Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, shall not constitute an Excluded Asset under this Agreement.

(50) "**Executive Orders**" has the meaning assigned in Section 4.10(1).

(51) "**Existing Bridge Loan and Security Agreement**" means that certain *Bridge Loan and Security Agreement*, dated as of August 15, 2024, by and between Recombinetics and Timothy Clarkson, as in effect on the date hereof.

(52) "**Existing Issuers**" has the meaning specified therefor in the definition of the term "Pledged Shares".

(53) "**FATCA**" means Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) thereof and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such provisions.

(54) "**Fee Letter**" means the Fee Letter, dated as of the Effective Date, by and among the Borrowers and Lender.

(55) "**Final DIP Order**" means the order of the Bankruptcy Court entered in the Cases after notice and final hearing pursuant to the Bankruptcy Rules or such other procedures as approved by the Bankruptcy Court which, among other matters (but not by way of limitation), authorizes the Borrowers to obtain credit and to incur (or guaranty) the Obligations and grant Liens under the Loan Documents, as the case may be, and provides for the superpriority of Lender's claims, and authorizes the use of cash collateral, as the same shall be approved by, and may be modified or supplemented from time to time after the Final Order Entry Date with the written consent of, Lender in its sole and absolute discretion.

(56) "**Final Order Effective Date**" means the date on which the conditions under Section 3.2 are satisfied or waived as determined by Lender.

(57) "**Final Order Entry Date**" means the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

(58) "**First Amendment**" has the meaning assigned in the Recitals.

(59)

(60) "**FRB**" means the Board of Governors of the Federal Reserve System or any successor thereto.

(61) "**GAAP**" means United States generally accepted accounting principles, as in effect from time to time, consistently applied.

(62) "**Governmental Authority**" means the United States, Brazil and any state, county, city or other political subdivision, agency or instrumentality exercising jurisdiction over the Borrowers.

(63) "**Historical Financial Statements**" means (a) the unaudited income statement for Recombinetics, Inc. for the eight-month period ending August 30, 2024 and (b) the unaudited balance sheet for Recombinetics, Inc. for the period ending as of August 31,2024.

(64) "**Indemnitees**" means, collectively, the Prior Lender, the Lender and any Affiliates of Lender, together with the respective partners, members, directors, officers, employees, agents and advisors of the Prior Lender, the Lender and any Affiliates of Lender.

(65) "**Initial DIP Budget**" means the DIP Budget delivered to Lender on the Effective Date, which shall be acceptable to Lender in its sole discretion. The Initial DIP Budget is attached hereto as Exhibit B and is acceptable to Lender.

(66) "**Initial Prepetition Rescue Financing Agreement**" has the meaning assigned in the Recitals.

(67) "**Intellectual Property**" means with respect to each Borrower, collectively, all rights, priorities and privileges (including, without limitation, any IP Ancillary Rights) relating to intellectual property, now owned or hereafter acquired and owned by such Borrower, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, and the Trademarks.

(68) "**Interim DIP Order**" means the order of the Bankruptcy Court substantially in the form attached hereto as Exhibit C (except as may otherwise be agreed in writing or on the record by Lender at the interim hearing with respect to such order in the Cases) entered in the Cases after an interim hearing pursuant to the Bankruptcy Rules, which, among other matters (but not by way of limitation), authorizes, on an interim basis, the Borrowers to obtain credit and incur (or guaranty) the Obligations and grant Liens under the Loan Documents, as the case may be, and provides for the superpriority of Lender's claims, and authorizes the use of cash collateral, as the same shall be approved by, and may be modified or supplemented from time to time after the Interim Order Entry Date but before the Final Order Entry Date, with the written consent of the Lender in its sole and absolute discretion.

(69) "**Interim Order Entry Date**" means the date on which the Interim DIP Order is entered on the docket of the Bankruptcy Court.

(70) "**IP Ancillary Rights**" means, with respect to any Intellectual Property, as applicable, all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property, and, in each case, all rights to obtain any other IP Ancillary Right throughout the world.

(71) "**IP License**" means all contractual obligations (and any related IP Ancillary Rights), whether written or oral, granting any right, title and interest in or relating to any Intellectual Property.

(72) "**Lead Borrower**" has the meaning set forth in the introductory paragraph.

(73) "**Lien**" means any lien, security interest, encumbrance or other similar creditor's right or claim in or against an asset, securing an obligation owed to, or a claim by, any Person other than the owner of such asset, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes.

(74) "**Loan**" means the loans to be made by Lender to Borrowers under this Agreement, whether in the form of a New Money Loan or a Roll-Up Loan, as applicable, and all other amounts secured by the Loan Documents in an aggregate amount not to exceed the Commitment.

(75) "**Loan Documents**" means: (a) this Agreement, (b) the Fee Letter, (c) the DIP Orders, (d) the Cash Management Order, (e) each Request for Loan, (f) each Variance Report, (g) such assignments and/or consent agreements pertaining to management agreements, contracts and other rights as may be required under this Agreement, (h) any Control Agreement, (i) all other documents evidencing,

securing, governing or otherwise pertaining to any Obligations, and (j) all amendments, modifications, renewals, substitutions and replacements of any of the foregoing.

(76) "**Material Adverse Effect**" means any change or event that is or would reasonably be expected to result in (a) a material adverse effect on the ability of the Borrowers, taken as a whole, to perform their Obligations under any Loan Document to which they are a party; or (b) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrowers of any Loan Document to which it is a party. Notwithstanding the foregoing, in no event shall any Material Adverse Effect be deemed to exist as a result of the commencement of the Cases or the circumstances and events leading up thereto to the extent that such event(s) would reasonably be expected to result therefrom.

(77) "**Material Contract**" means each contract or agreement (including, without limitation, any IP License and any grant by any Governmental Authority) to which any Borrower is a party that is material to the operations of the business of such Borrower or the Borrowers and their subsidiaries (taken as a whole) or the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

(78) "**Maturity Date**" means the earliest of (a) January 3, 2024, (b) the consummation of a sale of all or substantially all of the assets of the Borrowers pursuant to section 363 of the Bankruptcy Code or otherwise, (c) the effective date of a Chapter 11 Plan in the Cases, and (d) the date of termination of the Lender's Commitments and the acceleration of any outstanding extensions of credit upon an Event of Default, in each case, in accordance with the terms hereof and the other Loan Documents.

(79) "**Maximum Rate**" means the maximum interest rate allowed by Applicable Law in effect with respect to any Loan on the date for which a determination of interest accrued hereunder is made and after taking into account all fees, payments and other charges which are, under Applicable Law, characterized as interest.

(80) "**New Money Delayed Draw Commitment**" means the Lender's obligation to make (a) New Money Loans to the Borrowers hereunder on the Effective Date and (b) New Money Delayed Draw Loans to the Borrowers hereunder after the Effective Date, expressed as an amount representing the maximum principal amount of New Money Delayed Draw Loans to be made by the Lender under this Agreement. The aggregate amount of the New Money Delayed Draw Commitments on the Effective Date is $[1,838,757.56].[3]

(81) "**New Money Delayed Draw Loans**" has the meaning assigned in Section 2.1.

(82) "**New Money Delayed Draw Termination Date**" means the earliest to occur of (a) the date on which the New Money Delayed Draw Commitments are fully drawn, (b) the Maturity Date and (c) unless otherwise agreed by the Lender, the date that is three (3) Business Days prior to the consummation of a sale of all or substantially all of the assets of the Borrowers pursuant to section 363 of the Bankruptcy Code or otherwise.

(83) "**New Money Initial Loan**" has the meaning assigned in Section 2.1.

(84) "**New Money Loans**" means the New Money Initial Loans and the New Money Delayed Draw Loans.

[3] [NTD: Bracketed amounts to be updated if Interim Order entered after 11/12/24.]

(85) "**Non-Excluded Taxes**" means all Taxes other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of any Borrower under any Loan Documents.

(86) "**Obligations**" mean the full and punctual observance and performance of all present and future duties, covenants and responsibilities due to Lender by the Borrowers under this Agreement and all other Loan Documents, all present and future obligations and liabilities of the Borrowers to Lender for the payment of money under any of the Loan Documents (including, without limitation, the Roll-Up Loan, all principal amounts, interest, late charges, fees and all other charges and sums, as well as all costs and expenses payable by the Borrowers under this Agreement and the other Loan Documents and whether or not allowed or allowable in any proceeding), whether direct or indirect, contingent or non-contingent, matured or unmatured, accrued or not accrued, related or unrelated to this Agreement, whether or not now contemplated and whether or not of the same character or class as the Borrowers' obligations under this Agreement or any other Loan Document, as well as all renewals, refinancings, consolidations and extensions of any of the foregoing.

(87) "**OFAC**" has the meaning assigned in Section 4.10(1).

(88) "**OFAC Laws and Regulations**" has the meaning assigned in Section 4.10(1).

(89) "**Other Lists**" has the meaning assigned in Section 4.10(1).

(90) "**Participant**" has the meaning assigned to it in Section 11.24(3).

(91) "**Patents**" means with respect to the Borrowers, (a) all letters patent of the United States, and any other jurisdiction, country or any political subdivision thereof, all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions thereof and all goodwill associated therewith, (b) all applications for letters patent of the United States and any other jurisdiction, country or any political subdivision thereof, all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions thereof and (c) all rights to obtain any foreign counterparts to, divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of the foregoing.

(92) "**Permits**" means, with respect to any Person, any permit, approval, clearance, authorization, enrollment, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case, and applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject.

(93) "**Permitted Debt**" means, collectively:

(a) any Debt owing to Lender under this Agreement and the other Loan Documents;

(b) Debt in favor of Timothy Clarkson incurred pursuant to the Existing Bridge Loan and Security Agreement in an aggregate principal amount not to exceed $200,000;

(c) any other Debt outstanding on the Petition Date as set forth on Schedule 1.1(42); *provided* that any principal amounts incurred under each category of Debt listed therein shall not increase from and after the Petition Date other than to the extent expressly contemplated by and permitted under the DIP Budget; and

(d) the Prepetition Obligations;

provided, that, notwithstanding anything to the contrary, other than with respect to the Carve-Out, no Debt shall be permitted to have an administrative expense claim status under the Bankruptcy Code senior to or *pari passu* with the super priority administrative expense claims of Lender as set forth herein and in the DIP Orders.

(94) "**Permitted Liens**" means, collectively:

(a) Liens in favor of Lender (if any)

(b) Liens in favor of Timothy Clarkson to secure Debt permitted under clause (b) of the definition of Permitted Debt;

(c) the Prepetition Liens;

(d) the Prepetition Permitted Liens; and

(e) any other Liens existing on the Petition Date as set forth on Schedule 1.1(43) hereto; *provided* that (i) the principal amount of the underlying obligations that such Liens secure shall not increase in amount from and after the Petition Date other than to the extent expressly contemplated by and permitted under the DIP Budget and (ii) no additional or other assets shall secure such Obligations other than as in effect on the Petition Date;

provided, that that all Permitted Liens (other than the Carve-Out and the Prepetition Permitted Liens), while any portion of the Obligations remain outstanding, shall at all times be junior and subordinate to the Liens granted under the Loan Documents and the DIP Orders. The prohibition provided for in this definition specifically restricts, without limitation, any Borrower or any other party-in-interest in the Cases or any successor case, from priming or creating claims, Liens or interests pari passu with any claims, Liens or interests of Lender, any Lien (other than for the Carve-Out and the Prepetition Permitted Liens) irrespective of whether such claims, Liens or interests may be "adequately protected".

(95) "**Person**" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

(96) "**Petition**" means the voluntary petitions for relief under chapter 11 of the Bankruptcy Code filed by the Borrowers with the Bankruptcy Code.

(97) "**Petition Date**" has the meaning assigned in the Recitals.

(98) "**Chapter 11 Plan**" means a plan of reorganization or liquidation under the Bankruptcy Code submitted by the Borrowers to the Bankruptcy Court in connection with the Cases, or any Case, as applicable.

(99) "**Pledged Issuers**" has the meaning specified therefor in the definition of the term "Pledged Shares".

(100) "**Pledged Shares**" means, subject to Section 10.1, (i) the shares of Equity Interests described in Schedule 4.14(6) hereto, whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, issued by the Persons described in such Schedule 4.14(6) (the "**Existing Issuers**"), (ii) the rights, privileges, authorities, and powers of such Borrower as an owner or holder of such Equity Interests, including all economic rights, all control rights, authority, and powers, and all status rights of such Borrower as a member, shareholder, or other owner (as applicable), and all rights and interests, if any, to participate in the management of each Pledged Issuer (as defined below), (iii) the shares of Equity Interests at any time and from time to time owned or acquired by a Borrower of any and all Persons now or hereafter existing (such Persons, together with the Existing Issuers, being hereinafter referred to collectively as the "**Pledged Issuers**" and each individually as a "**Pledged Issuer**"), whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, (iv) the certificates representing such shares of Equity Interests, all options and other rights, contractual or otherwise, in respect thereof and all dividends, distributions, cash, financial assets, securities, other Equity Interests, stock options and commodity contracts, notes, debentures, bonds, promissory notes or other evidences of indebtedness and all other property (including, without limitation, any stock dividend and any distribution in connection with a stock split) from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests and (v) without affecting the obligations of any Borrower under any provision prohibiting such action under this Agreement or any other Loan Document, in the event of any consolidation or merger involving any Pledged Issuer and in which such Pledged Issuer is not the surviving entity or any division of any Pledged Issuer, all Equity Interests of the successor entity formed by or resulting from such consolidation, merger or division.

(101) "**Post-Carve Out Amounts**" has the meaning assigned in Section 2.3(3).

(102) "**Post-Carve Out Trigger Notice Cap**" has the meaning assigned in the DIP Orders.

(103) "**Post-Carve Out Trigger Notice Reserve**" has the meaning assigned in Section 2.3(3).

(104) "**Prepetition Borrowers**" has the meaning assigned in the Recitals.

(105) "**Prepetition Facility**" means the credit facility governed by the Prepetition Rescue Financing Agreement.

(106) **"Prepetition Liens**" means any Liens securing the Prepetition Obligations.

(107) "**Prepetition Loans**" means the "Loan" as defined in the Prepetition Rescue Financing Agreement.

(108) "**Prepetition Rescue Financing Agreement**" has the meaning assigned in the Recitals.

(109) "**Prepetition Loan Documents**" means the Prepetition Rescue Financing Agreement and the other "Loan Documents" as defined in the Prepetition Rescue Financing Agreement (as such Prepetition Loan Documents have been amended, restated, amended and restated, supplemented or otherwise modified prior to the Petition Date).

(110) "**Prepetition Permitted Liens**" has the meaning assigned in the DIP Orders.

(111) "**Prepetition Obligations**" means the "Obligations" as defined in the Prepetition Rescue Financing Agreement.

(112) "**Prepetition Secured Lender**" has the meaning set forth in the DIP Orders.

(113) "**Prior Lender**" has the meaning assigned in the Recitals.

(114) **"Professional Fees"** means all accrued and unpaid claims for fees and expense reimbursements of Professional Persons retained by the Borrowers (but not any success or transaction fees).

(115) **"Professional Person**" means a Person who is an attorney, accountant, appraiser, auctioneer or financial advisor or other professional person who is retained with approval of the Bankruptcy Court by any Borrower pursuant to section 327 of the Bankruptcy Code.

(116) "**Proposed DIP Budget**" has the meaning assigned in Section 7.10(5).

(117) "**Purchased Assets**" has the meaning assigned to it in the Asset Purchase Agreement.

(118) "**Recombinetics**" has the meaning assigned in the introductory paragraph.

(119) **"Remedies Notice Period"** has the meaning assigned in Section 9.1(1).

(120) "**Request for Loan**" means a request in form attached hereto as Exhibit D.

(121) "**Responsible Officer**" means any of the Chief Executive Officer, President, Chief Financial Officer, Vice President, Treasurer, Controller or Secretary of each Borrower.

(122) "**Roll-Up Loan**" means the Loan made pursuant to Section 2.1(3) resulting from the roll-up and refinancing of the Prepetition Obligations outstanding on the Effective Date, in accordance with the DIP Orders.

(123) "**Roll-Up Loan Commitment**" means, Lender's obligation to make the Roll-Up Loan to the Borrowers pursuant to Section 2.1(3), immediately prior to giving effect to the roll-up. The aggregate principal amount of the Roll-Up Loan Commitment is [$1,820,877.95],[4] which amount shall (i) comprise a roll-up and refinancing of the Prepetition Obligations (including any fees due and owing in connection with the Prepetition Loans) approved pursuant to the DIP Orders and (ii) be deemed funded by Lender pursuant to Section 2.1.

(124) "**Sale**" has the meaning assigned in the DIP Orders.

(125) "**Sale Milestone**" has the meaning assigned in Section 7.9(3).

(126) "**Sale Order**" has the meaning assigned in the Bidding Procedures Order.

(127) "**Sale Transaction**" means a sale of the entire business of the Borrowers and their respective Subsidiaries as a going concern.

(128) "**SDN List**" has the meaning assigned in Section 4.10(1).

[4] [NTD: Bracketed amounts to be updated if Interim Order entered after 11/12/24.]

(129) "**Securities Exchange Act**" means the Securities Exchange Act of 1934, as in effect from time to time.

(130) "**State**" means the State of New York.

(131) "**Subsidiary**" means, with respect to any Person, (a) any corporation or limited liability company more than fifty percent (50%) of whose Voting Stock having by the terms thereof power to elect a majority of the directors or managers of such corporation or limited liability company (irrespective of whether or not at the time stock of any class or classes of such corporation or limited liability company shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person, directly or indirectly, through Subsidiaries and (b) any partnership, association, joint venture or other entity in which such Person, directly or indirectly, through Subsidiaries, has more than a fifty percent (50%) voting Equity Interest at the time. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of a Borrower.

(132) "**Surrogen**" has the meaning assigned in the introductory paragraph.

(133) "**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

(134) "**Tax Indemnitee**" has the meaning assigned in Section 2.6(4)(a).

(135) "**Therillume**" has the meaning assigned in the introductory paragraph.

(136) "**Trademarks**" means, with respect to the Borrowers, (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto and (b) the right to obtain all extensions or renewals thereof.

(137) "**UCC**" means the Uniform Commercial Code, as adopted and enacted and as in effect from time to time in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

(138) "**U.S. Trustee**" means the United States Trustee for the District of Delaware.

(139) "**Voting Stock**" means with respect to any Person, shares of such Person's Capital Stock having the right to vote for the election of directors or managers (or Persons acting in a comparable capacity) of such Person under ordinary circumstances.

ARTICLE 2
LOAN TERMS

Section 2.1 **Loan**.

(1) Subject to the terms and conditions set forth in Sections 3.1 hereof and in the Interim DIP Order, the Lender agrees following the Bankruptcy Court's entry of the Interim DIP Order, to

make a term loan to the Borrowers in a single Borrowing on, or on the Business Day after, the Effective Date (the "**New Money Initial Loan**") out of a portion of the Lender's New Money Delayed Draw Commitment in an aggregate principal amount not to exceed the Lender's New Money Delayed Draw Commitment; *provided*, that the total amount of the Borrowing of New Money Delayed Draw Loans made on the Effective Date be equal to $[1,298,757.56][5] (of which only $1,227,000 will be funded and the remaining amount of the New Money Initial Loan shall be retained by the Lender for payment on account of fees due and owing by the Borrowers to the Lender on the Effective Date). Amounts borrowed under this Section 2.1(1) and repaid or prepaid may not be reborrowed.

(2) Subject to the terms and conditions set forth in Sections 3.2 hereof and in the Final DIP Order, the Lender agrees following the Bankruptcy Court's entry of the Final DIP Order, to make a term loan to the Borrowers in a single Borrowing on, or on the Business Day after, the Final Order Entry Date (the "**New Money Delayed Draw Loan**") out of a portion of the Lender's New Money Delayed Draw Commitment in an aggregate principal amount not to exceed the Lender's New Money Delayed Draw Commitment; *provided*, that the total amount of the Borrowing of New Money Delayed Draw Loans made on the Final DIP Order Entry Date shall be equal to $540,000.00. Amounts borrowed under this Section 2.1(2) and repaid or prepaid may not be reborrowed.

(3) Subject to the terms and conditions set forth herein and in the DIP Orders, the Lender shall automatically, and without further action or order of the Bankruptcy Court, be deemed on the Interim Order Entry Date to have "rolled-up" and refinanced as the Roll-Up Loan all Prepetition Obligations held by the Lender immediately prior to the Effective Date. The Roll-Up Loan shall be deemed fully funded in the amount of the Roll-Up Loan Commitment on the Interim Order Entry Date, and immediately thereafter (i) the Roll-Up Loan Commitment shall terminate, the Roll-Up Loan shall be deemed to be a Loan funded under this Agreement on the Effective Date, and (ii) the Prepetition Rescue Financing Agreement and the Prepetition Obligations shall be deemed automatically satisfied and discharged in full.

Section 2.2 **Maturity**. All Obligations of the Borrowers under this Agreement, if not already paid pursuant to the provisions herein, including all accrued and unpaid interest thereto and all fees and other amounts owing by Borrower to Lender with respect thereto, will be due and payable upon the Maturity Date.

Section 2.3 **Method of Borrowing**.

(1) Each Borrowing of New Money Loans shall be made upon the Lead Borrower's irrevocable written notice to the Lender in the form of a Request for Loan. Each Request for Loan must be received by the Lender not later than 12:00 p.m. Eastern time, one (1) Business Day prior to the requested date of any Borrowing. Each Request for Loan shall specify:

(a) the requested date of the Borrowing (which shall be a Business Day),

(b) the principal amount of the Loan to be borrowed, and

(c) wire instructions of the account(s) of the Borrower to which funds are to be disbursed.

(2) The Borrowers hereby irrevocably authorize Lender to rely on telephonic, facsimile, electronic transmission or written instructions of any Person identifying themselves as a

[5] [NTD: Bracketed amounts to be updated if Interim Order entered after 11/12/24.]

Responsible Officer (or any other individual from time to time authorized to act on behalf of the Borrowers) with respect to any request to make a Loan or a repayment hereunder.

(3) On the day on which a Carve-Out Trigger Notice is given by the Lender to the Borrowers (the "**Termination Declaration Date**"), the Carve-Out Trigger Notice shall (i) constitute a demand to the Borrowers to utilize all cash on hand as of such date and any available cash thereafter held by the Borrowers to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap into the Debtor Professional Fee Escrow and (ii) to the extent of any shortfall, be deemed a Request for Loan in an amount equal to the Post-Carve Out Trigger Notice Cap. The Borrowers shall deposit and hold such amounts in a segregated account in trust to pay such Allowed Debtor Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "**Post-Carve Out Trigger Notice Reserve**") prior to any and all other claims. On the first (1^{st}) Business Day after the Lender gives such Request for Loan, notwithstanding anything herein to the contrary, including with respect to the existence of a Default or an Event of Default, the failure of the Borrowers to satisfy any or all of the conditions precedent for a Borrowing under this facility, any termination of the Commitments following an Event of Default, or the occurrence of the Maturity Date, the Lender shall be obligated to make New Money Loans to the Borrowers to fully fund the Carve Out Reserve in an amount not to exceed the aggregate outstanding amount of New Money Delayed Draw Commitments as of the Effective Date; provided that in no event shall the aggregate principal amount of all New Money Loans exceed $[1,838,757.56].[6] All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iii) of the definition of "Carve Out" in the DIP Orders (the "**Post-Carve Out Amounts**"), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Lender, unless the Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Lender on account of any Prepetition Obligations that remain outstanding to the extent not rolled up and converted into Obligations hereunder, and then, to the extent all Obligations and Prepetition Obligations have been indefeasibly paid in full in cash, any excess shall be paid to the Borrowers' estates. For the avoidance of doubt and notwithstanding anything to the contrary herein or in any Prepetition Loan Document, the Carve-Out shall be senior to all liens and claims securing this facility, the Adequate Protection Liens, and any and all other forms of adequate protection, liens or claims securing the Obligations or the Prepetition Obligations. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, other than the Post-Carve Out Trigger Notice Reserve in an amount no greater than the Post-Carve Out Trigger Notice Cap, upon the occurrence of the Termination Declaration Date, the Lender shall have no further obligation to fund any costs or expenses of the Cases or the Carve Out.

Section 2.4 **<u>Interest; Default Rate</u>**. The outstanding principal balance of the Loans (including any amounts added to principal under the Loan Documents) shall bear interest at the Contract Rate. Upon the occurrence and during the continuance of an Event of Default or if any Obligations are outstanding after the Maturity Date, the Obligations shall automatically bear interest at the Default Rate.

Section 2.5 **<u>Payments and Maturity</u>**.

(1) On the Maturity Date, Borrower shall pay the principal balance of the Loans, together with any and all remaining unpaid interest thereon at the applicable rate provided herein.

(2) Any prepayments are to be applied: *first*, to any fees and expenses due to Lender under the Loan Documents; *second*, to the payment of interest on the principal balance from time to time remaining unpaid at the applicable rate provided herein; and *third*, to reduce the principal balance.

[6] [NTD: Bracketed amounts to be updated if Interim Order entered after 11/12/24.]

(3) The Borrower shall pay to the Lender such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified in the Fee Letter. Such fees shall be fully earned when and as set forth therein and shall not be refundable for any reason whatsoever.

Section 2.6 **Additional Payment Terms**.

(1) All sums payable to Lender hereunder shall be payable in lawful currency of the United States of America in immediately available funds without deduction, set-off or counterclaim no later than 12:00 p.m. Eastern time on the date when due at the principal office of Lender, or to or from such other account or address as Lender may from time to time designate in a written notice to the Borrowers. No credit shall be given for any payment received by check, draft or other instrument or item until such time as Lender shall have received credit therefor from the bank or other financial institution upon which said check, draft or other instrument or item is drawn.

(2) When any payment hereunder is due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day, and such additional time shall be included in the computation of interest.

(3) If at any time a Borrower is required by law to make any deduction or withholding in respect of any taxes, duties or other charges from any payment due hereunder, the sum due from such Borrower in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, Lender will in any event receive and retain a net sum equal to the sum which Lender would have received had no such deduction or withholding been required to be made. Such Borrower shall promptly deliver to Lender receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any such deduction or withholding.

(4) **Taxes.**

(a) The Borrowers shall, jointly and severally, indemnify Lender (each a "**Tax Indemnitee**"), within ten (10) days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee or required to be withheld or deducted from a payment to such Tax Indemnitee attributable to any payment under or with respect to any Loan Document, and any Other Taxes paid or payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 2.6(4)), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered by the Tax Indemnitee or by Lender on its own behalf or on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(b) If and to the extent that a Tax Indemnitee, in its sole discretion (exercised in good faith), determines that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.6(4) (including by the payment of additional amounts pursuant to this Section 2.6(4)), then such Tax Indemnitee shall pay to the relevant Borrower the amount of such refund, net of all out-of-pocket expenses of the Tax Indemnitee (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrowers, upon the request of the Tax Indemnitee, agrees to repay the amount paid over by the Tax Indemnitee (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Tax Indemnitee to the extent the Tax Indemnitee is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (b), in no event will the Tax Indemnitee be required to pay any amount to a Borrower pursuant to this paragraph (b) the payment of which would place the Tax Indemnitee in a less favorable net after-Tax position than the Tax Indemnitee would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph (b) shall not be construed to require a Tax Indemnitee to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Borrower or any other Person.

(c) If Lender is entitled to an exemption from or reduction of withholding with respect to payments made under any Loan Document, Lender shall deliver to such Borrower such properly completed and executed documentation reasonably requested by such Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding; including, if Lender is a U.S. person (as defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), an IRS Form W-9 or, if Lender is not a U.S. person, the appropriate IRS Form W-8. In addition, if reasonably requested by such Borrower, Lender shall deliver such other documentation prescribed by applicable law or reasonably requested by such Borrower as will enable such Borrower (i) to determine whether or not Lender is subject to backup withholding or information reporting requirements and (ii) to comply with FATCA, as applicable.

(d) The agreements in this Section 2.6 survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.7 **Use of Proceeds**. The proceeds of the Loans shall be used by the Borrowers solely (i) to pay fees and expenses incurred in connection with this Agreement, the Cases, and related transactions, (ii) to pay approved Prepetition Obligations in accordance with the DIP Budget, (iii) for working capital and general corporate purposes of the Borrowers in accordance with the DIP Budget and (iv) with respect to the New Money Initial Term Loan, a portion thereof may be deposited in certain restricted deposit accounts of any Borrower to refund amounts used for payroll and benefits, not to exceed the amounts set in week 1 of the DIP Budget delivered on the Effective Date for such expenses. No part of the proceeds of the Loans will be used, whether directly or indirectly:

(1) in any manner that causes such Loan or the application of such proceeds to violate the Regulations of the FRB, including Regulation T, Regulation U and Regulation X, or any other regulation thereof, or to violate the Securities Exchange Act;

(2) for any purpose that is prohibited under the Bankruptcy Code or the DIP Orders;

(3) to finance in any way: (x) any investigation or adversary action, suit, arbitration, proceeding, application, motion, contested matter or other litigation of any type with respect to the Prepetition Obligations or materially adverse to the interests of the Lender or the Prior Lender or their respective rights and remedies under the Loan Documents, the DIP Orders or the Prepetition Loan Documents or (y) any other action which with the giving of notice or passing of time would result in an Event of Default hereunder or under any of the Loan Documents;

(4) for the payment of fees, expenses, interest, or principal under any prepetition obligations other than under the Prepetition Loan Documents pursuant to the roll-up hereunder and adequate protection payments permitted under the DIP Orders;

(5) unless otherwise agreed by Lender, to make any distributions under a Chapter 11 Plan in the Cases that does not provide for the indefeasible payment of the Loans in full and in cash;

(6) except as expressly permitted by the DIP Budget (including any permitted variances) to make any payment in settlement of any prepetition claim, action or proceeding without the prior written consent of Lender; or

(7) to make any post-petition payments or disbursements not otherwise expressly authorized in the DIP Budget, without the prior written consent of the Lender.

Nothing herein shall in any way prejudice or prevent Lender from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest (and each such order shall preserve Lender's right to review and object to any such requests, motions or applications).

Section 2.8 **Prepayments**. The Loans may be prepaid, in whole at any time, or in any part from time to time, without premium or penalty, and must be prepaid in the following amounts and at the following times:

(1) unless Lender shall otherwise consent in writing, contemporaneously with the refinancing of the Debt owing to Lender under this Agreement, in an amount equal to one hundred percent (100%) of the outstanding Obligations;

(2) unless Lender shall otherwise consent in writing, on the date on which a Borrower (or Lender as loss payee or assignee) receives any casualty proceeds with respect to any asset upon which Lender maintained a Lien, an amount equal to one hundred percent (100%) of such proceeds (net of reasonable and documented out-of-pocket expenses and fees), or such lesser portion of such proceeds as Lender shall elect to apply to the Obligations;

(3) an amount equal to any interest that is deemed to be in excess of the Maximum Rate and is required to be applied to the reduction of the principal balance of the Loans as provided for in this Agreement;

(4) unless Lender shall otherwise consent in writing, upon receipt by a Borrower of the proceeds of any Asset Disposition that is not made in the ordinary course of business or that pertains to any Collateral securing the Obligations, an amount equal to one hundred percent (100%) of the net cash proceeds of such Asset Disposition (net of reasonable and documented out-of-pocket fees and expenses) or such lesser portion as Lender shall elect to apply to the Obligations; and

(5) unless Lender shall otherwise consent in writing, upon receipt by a Borrower of proceeds (net of reasonable and documented out-of-pocket fees and expenses) of any other extraordinary receipts or from the incurrence of Debt or issuance and sale of any Debt or equity securities at any time, in each case, which is prohibited by the terms herein, an amount equal to one hundred percent (100%) of such net proceeds, or such lesser portion as Lender shall elect to apply to the Obligations.

Section 2.9 **Recourse Obligations**. Each Loan shall be a fully recourse Obligation of the Borrowers and upon the occurrence of an Event of Default, Lender may exercise all of its rights and remedies under the Loan Documents, including, without limitation, its right to seek and obtain a judgment against any Borrower with respect to the Obligations evidenced hereby and to hold the Borrowers liable for such Obligations.

ARTICLE 3
CONDITIONS PRECEDENT TO LENDER'S OBLIGATIONS

Section 3.1 **Conditions to Funding of Loans**. It is expressly agreed that Lender shall not be obligated to make the Loans hereunder until the following conditions have been satisfied, unless waived by Lender in writing at its sole discretion:

(1) **Documents**. Lender shall have received and reviewed to its satisfaction the following fully-executed documents or deliverables:

(a) this Agreement;

(b) the Fee Letter;

(c) the Initial DIP Budget;

(d) (i) a certificate of each Borrower, dated the Effective Date and executed by its Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of this Agreement and Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of each financial officer and any other officers of such Borrower authorized to sign the Loan Documents to which it is a party, and (C) contain appropriate attachments, including (i) the certificate or articles of incorporation or organization of each Borrower certified by the relevant authority of the jurisdiction of organization of such Borrower and a true and correct copy of its by-laws or operating, management or partnership agreement and (ii) a good standing certificate for each Borrower from its jurisdiction of organization;

(e) filing of appropriate financing statements in such office or offices as may be determined as necessary by Lender to perfect the security interests and Liens purported to be created hereunder; and

(f) evidence satisfactory to Lender in its sole discretion that the Asset Purchase Agreement has been executed.

(2) **Representations and Warranties; No Default or Event of Default.** (i) The representations and warranties contained in this Agreement and in all other Loan Documents are true and correct on and as of the Interim Order Entry Date in all material respects, except to the extent that any such representation and warranty is qualified by materiality, "Material Adverse Effect" or other similar qualification, in which case such representation and warranty shall be true and correct in all respects and (ii) no Default or Event of Default shall have occurred or is continuing.

(3) **Litigation**. Except for the Cases, there is not presently pending any unstayed suit, action, proceeding or investigation against the Borrowers that (i) could reasonably be expected to have a

Material Adverse Effect, or (ii) pertains to this Agreement, the Prepetition Rescue Financing Agreement, the DIP Orders or any part thereof or the financing contemplated hereby.

(4) **Lien Matters**. Lender shall have a valid first priority perfected Lien on the assets of the Borrowers, subject only to the Carve-Out and Prepetition Permitted Liens, and Lender shall have received the results of a recent lien search in such jurisdictions as Lender shall deem appropriate, and such search shall reveal no liens on any of the assets of the Borrowers (other than Prepetition Liens and the Prepetition Permitted Liens).

(5) **Fees, Costs and Expenses**. The Borrowers shall have paid all fees (including, without limitation, all reasonable and documented attorneys' fees), costs, and expenses incurred by Lender in connection with the negotiation, execution and delivery of this Agreement and the other Loan Documents in connection therewith, which shall be added to the Obligations hereunder.

(6) **Legal Investment**. On the Effective Date, such Loan shall not be prohibited by any applicable law of any Governmental Authority (including, without limitation, Regulations T, U or X of the FRB) as a result of the promulgation or enactment thereof or any changes therein or change in the interpretation thereof by any Governmental Authority, subsequent to the date of this Agreement.

(7) **Material Adverse Effect**. Since October 3, 2024, other than those resulting from the commencement of the Cases, no event shall have occurred or failed to occur that could be expected to have a Material Adverse Effect.

(8) **Governmental and Third Party Approvals**. All governmental and third party approvals in connection with the credit facilities provided hereunder necessary for the Borrowers and their respective Subsidiaries to conduct their business as conducted as of the date hereof without materially adverse financial consequences have been obtained and remain in effect. The Borrowers and their respective Subsidiaries have obtained all necessary regulatory approvals, and the absence of any injunction, temporary restraining order or judgment which prohibits the making or purchase of the Loans.

(9) **Cases**. All "first day orders" intended to be entered at or immediately after the Borrowers' "first day" hearing (including a cash management order (the "**Cash Management Order**") shall have been entered by the Bankruptcy Court.

(10) **Interim DIP Order and First Day Orders**. The Interim DIP Order (i) shall have been entered on the docket of the Bankruptcy Court on or before the Effective Date and (ii) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of Lender in its sole discretion; and, if the Interim DIP Order is the subject of a pending appeal in any respect, neither the Loans, nor the performance by the Borrowers of any of their respective obligations hereunder, under the other Loan Documents or under any other instrument or agreement referred to herein shall be the subject of a presently effective stay pending appeal. Such Interim DIP Order shall authorize and approve this Agreement and the Loan Documents contemplated hereby and thereby. All motions, orders (including the "first day" orders) and other documents to be filed with and submitted to the Bankruptcy Court on the Petition Date shall be in form and substance reasonably satisfactory to the Lender.

(11) **Other Proceedings**. No unstayed action, suit, investigation or other proceeding (including without limitation, the enactment or promulgation of a statute or rule) by or before any arbitrator or any Governmental Authority shall be threatened in writing or pending (other than the Cases) and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with this Agreement, any other Loan Document, or any transaction contemplated hereby or

thereby or (ii) which could be expected to result in a Material Adverse Effect, including, in each case, any proceedings challenging this Agreement or the DIP Orders or any part thereof.

Section 3.2 **Conditions to Final Order Effective Date**. It is expressly agreed that Lender shall not be obligated to make any Loan on or after the Final Order Effective Date until the following conditions have been satisfied, unless waived by Lender in writing at its sole discretion:

(1) **Request for Loan**. Lender shall have received a Request for Loan in accordance with the requirements of Section 2.3 and such Request for Loan shall be deemed to be a representation by the Borrowers that the conditions specified in this Section 3.2 have been fully satisfied.

(2) **Representations and Warranties; No Default or Event of Default**. (i) The representations and warranties contained in this Agreement and in all other Loan Documents are true and correct on and as of the date of the Final Order Effective Date in all material respects, except to the extent that any such representation and warranty is qualified by materiality, "Material Adverse Effect" or other similar qualification, in which case such representation and warranty shall be true and correct in all respects and (ii) no Default or Event of Default shall have occurred or is continuing.

(3) **Material Adverse Effect**. Other than those resulting from the commencement of the Cases, no event shall have occurred or failed to occur since the Effective Date, which occurrence or failure could be expected to have a Material Adverse Effect.

(4) **Final DIP Order.** The Final DIP Order (i) shall have been entered on the docket of the Bankruptcy Court on or before the date that is twenty-five (25) days after the Petition Date and (ii) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the written consent of Lender in its sole discretion; and, if the Final DIP Order is the subject of a pending appeal in any respect, the performance by the Borrowers of any of their respective obligations hereunder, under the other Loan Documents or under any other instrument or agreement referred to herein shall not be the subject of a presently effective stay pending appeal. Such Final DIP Order shall authorize and approve this Agreement and the Loan Documents contemplated hereby and thereby. All motions, orders and other documents to be filed with and submitted to the Bankruptcy Court in connection therewith shall be in form and substance reasonably satisfactory to Lender.

(5) **No Investigations or Injunctions**. Except for the Cases, no unstayed action, suit, investigation or other proceeding (including without limitation, the enactment or promulgation of a statute or rule) by or before any arbitrator or any governmental authority shall be threatened in writing or pending and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with this Agreement, any other Loan Document, or any transaction contemplated hereby or thereby or (ii) which could be expected to result in a Material Adverse Effect, including, in each case, any proceedings challenging this Agreement, the sale of substantially all of the Borrowers' assets pursuant to section 363 of the Bankruptcy Code, or the DIP Orders or any part thereof.

(6) **Use of Proceeds**. The use of the proceeds of the Loans shall be in compliance with the DIP Budget.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

Each Borrower represents and warrants to Lender that:

Section 4.1 **Organization and Power**. Each Borrower is duly organized, validly existing and in good standing (or equivalent) under the laws of its jurisdiction of organization. Each Borrower and its respective Subsidiaries has all requisite corporate, limited liability company or similar power and authority under the laws of its jurisdiction of organization to own, lease and operate its properties and to carry on its business as now being conducted. No Borrower is a "foreign person" within the meaning of § 1445(f)(3) of the Internal Revenue Code of 1986, as amended. A true, correct and complete copy of the organizational structure of the Borrowers is attached hereto as Exhibit A.

Section 4.2 **Validity of Loan Documents**. Each Borrower has all requisite organizational power and authority to execute and deliver the Loan Documents and to perform its obligations thereunder. The execution and delivery of the Loan Documents, and performance of its obligations hereunder, by each Borrower: (1) are duly authorized and do not require the consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any other party or Governmental Authority which has not been obtained; (2) will not violate any Applicable Law in any material respect or result in the imposition of any Lien, charge or encumbrance upon the assets of such Borrower, except as contemplated by the Loan Documents; and (3) will not conflict with or result or cause a breach of any of the terms or provisions of, or constitute a default under, any indenture, pledge, mortgage, deed of trust, loan agreement, partnership agreement, operating agreement or any other agreement or instrument to which any Borrower is party or by which any Borrower's property or assets are subject or bound. The Loan Documents constitute the legal, valid and binding obligations of each Borrower, enforceable in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

Section 4.3 **Compliance with Laws; No Violations**. Each Borrower and its respective Subsidiaries is in compliance with all Applicable Laws, rules, statues, regulations and ordinances except where noncompliance would not reasonably be expected to have a Material Adverse Effect. Each Borrower and each of its respective Subsidiaries has duly obtained and now holds all licenses, Permits, certifications, approvals and the like required by the Applicable Law of the jurisdictions in which such Borrower or such Subsidiary conducts its business, and each remains valid and in full force and effect. There exists no violations of any statutes, rules, orders, ordinances, regulations or requirements of any Governmental Authorities with respect to the operation of each Borrower's or each Subsidiary's business.

Section 4.4 **Financial Condition; Liabilities; Litigation**.

(1) The Historical Financial Statements and the other financial statements of each Borrower delivered to Lender are true and correct in all material respects and fairly present the financial condition of such Borrower as of the dates indicated therein and the results of its operations for the indicated periods and were or will be, as the case may be, prepared in accordance with GAAP and applied on a consistent basis with prior periods. All Debt of each Borrower as of the Effective Date is reflected on the most recently dated Historical Financial Statements of such Borrower. No information, exhibit, or report furnished by the Borrowers to Lender in connection with the negotiation of this Agreement contains any misstatement of fact or omits to state a material fact or any fact necessary to make the statement contained therein not materially misleading.

(2) Except as otherwise disclosed to Lender, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal

bankruptcy or insolvency law) pending or, to the knowledge of any Borrower, threatened against any Borrower that (a) questions the validity of the Loan Documents or the right of such Borrower to enter into the Loan Documents and consummate the transactions contemplated thereby, or (b) prevents, delays, interferes or would otherwise make illegal the consummation of the transactions contemplated by the Loan Documents, or (c) could reasonably be expected to cause, either individually or in the aggregate, any Material Adverse Effect.

Section 4.5 **Other Agreements; Defaults**.

(1) No Borrower, nor any of such Borrower's Subsidiaries, is a party to any agreement or instrument or subject to any court order, injunction, permit, or restriction, other than those resulting from the Cases, that could reasonably be expected to have a Material Adverse Effect.

(2) No Borrower is in violation or default of any provisions of its organizational documents, each as amended from time to time and as currently in effect. The execution, delivery and performance of and compliance with the Loan Documents will not result in any such violation or default.

(3) Except as a result of the commencement of the Cases or as otherwise previously disclosed to the Lender prior to the date hereof, each Material Contract is in full force and effect and enforceable against each Borrower that is party thereto.

Section 4.6 **Location of Borrower**. Each Borrower's principal place of business and chief executive offices are located at the address stated in Schedule 4.6 hereof.

Section 4.7 **Tax Filings**. Each Borrower and each of its respective Subsidiaries has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by such Borrower or such Subsidiary except (a) taxes that are being contested in good faith by appropriate proceedings and for which the Borrowers and their respective Subsidiaries, as applicable, have set aside on their books adequate reserves in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 4.8 **Outstanding Debt**. No Borrower, nor any of such Borrower's Subsidiaries, has outstanding Debt or liabilities except as set forth in its most recently dated Historical Financial Statement and as set forth on Schedule 1.1(43). No Borrower nor any of its Subsidiaries intends to incur additional Debt or liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debt or liabilities as they mature (taking into account the timing and amounts of cash to be received by such Borrower and the amounts to be payable on or in respect of obligations of such Borrower).

Section 4.9 **Full and Accurate Disclosure**. No statement of fact made by or on behalf of any Borrower or any of its Subsidiaries in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to any Borrower or any of its Subsidiaries which has not been disclosed to Lender which could reasonably be expected to have a Material Adverse Effect.

Section 4.10 **Anti-Terrorism and Anti-Money Laundering Compliance**.

(1) No Borrower nor any of its Subsidiaries is, and no Person who (a) owns a controlling interest in or otherwise controls a Borrower, or (b) holds, directly or indirectly, any legal or beneficial interest whatsoever in such Borrower or such Subsidiary, is: (i) listed on the Specially Designated Nationals and Blocked Persons List (the "**SDN List**") maintained by the Office of Foreign Assets Control

("**OFAC**"), Department of the Treasury, and/or on any other similar list ("**Other Lists**" and, collectively with the SDN List, the "**Lists**") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "**OFAC Laws and Regulations**"); or (ii) a Person (a "**Designated Person**") either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "**Executive Orders**"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "**Anti-Terrorism Laws**". This Section 4.10(1) shall not apply to any Person to the extent that such Person's interest in a Borrower is through a U.S. Publicly-Traded Entity. As used in this Agreement, "**U.S. Publicly-Traded Entity**" means a Person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a Person.

(2) Each Borrower and each of its Subsidiaries has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in such Borrower or such Subsidiary, to assure that funds invested by such holders in such Borrower or such Subsidiary are derived from legal sources ("**Anti-Money Laundering Measures**"). The Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.* ("**BSA**"), and all Applicable Laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, "**Anti-Money Laundering Laws**").

(3) No Borrower nor any of its Subsidiaries, nor to the knowledge of the Borrowers any Person who (1) owns a controlling interest in or otherwise controls such Borrower or such Subsidiary, or (2) holds, directly or indirectly, any legal or beneficial interest whatsoever in such Borrower or such Subsidiary, (i) is under investigation by any Governmental Authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

Section 4.11 **Acknowledgment of Lender's Reliance.** Each Borrower acknowledges that Lender will extend the Loans in reliance upon the representations and warranties contained in the Loan Documents or any certificate delivered to Lender pursuant to the Loan Documents. Lender shall be entitled to such reliance notwithstanding any investigation which has been or will be conducted by Lender on its behalf.

Section 4.12 **Use of Proceeds**. The proceeds of any Loan shall be used by the Borrowers solely for the purposes specified in Section 2.7.

Section 4.13 **Borrower Information**. Schedule 4.13 hereto sets forth a complete and accurate list as of the Effective Date of (i) the exact legal name of each Borrower, (ii) the state or jurisdiction of organization of each Borrower, (iii) the type of organization of each Borrower and (iv) the organizational identification number of each Borrower or states that no such organizational identification number exists.

Section 4.14 **Collateral**.

(1) Except as otherwise provided or referenced in this Agreement, each Borrower has good, marketable and indefeasible title to the Collateral, and the Collateral is free from all encumbrances and rights of setoff of any kind (other than Permitted Liens).

(2) Except as otherwise provided or referenced in this Agreement, no Borrower will hereafter, without Lender's prior written consent, sell, pledge, encumber, assign or otherwise dispose of any of the Collateral other than in the ordinary course of business or permit any lien or security interest to exist thereon except to Lender (other than Permitted Liens).

(3) Upon the filing of any UCC-1 financing statements in the appropriate filing office, Lender will have a perfected security interest (subject only to Permitted Liens and subject in priority only to the Carve-Out and Prepetition Permitted Liens) in the Collateral (including, without limitation, after-acquired Collateral at the time any Borrower acquires rights therein) to the extent that a security interest in the Collateral can be perfected by such filing.

(4) Except as otherwise provided or referenced in this Agreement, each Borrower will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

(5) Set forth in Schedule 4.14(5) hereto is a complete and accurate list, as of the Effective Date, of each Deposit Account, Securities Account and Commodities Account of each Borrower, together with the name and address of each institution at which each such account is maintained, the account number for each such account and a description of the purpose of each such account.

(6) The Pledged Issuers set forth in Schedule 4.14(6) identified as a Subsidiary of a Borrower are each such Borrower's only Subsidiaries existing on the Effective Date. The Pledged Shares have been duly authorized and validly issued and the Pledged Shares of any issuer that is a corporation are fully paid and nonassessable and the holders thereof are not entitled to any preemptive, first refusal or other similar rights. Except as noted in Schedule 4.14(6) hereto, the Pledged Shares constitute 100% of the issued shares of Equity Interests of the Pledged Issuers as of the date hereof. All other shares of Equity Interests of each Borrower's Subsidiaries constituting Pledged Shares will be duly authorized and validly issued, fully paid and nonassessable (other than Equity Interests in limited liability companies and partnerships which are validly issued and fully paid).

Section 4.15 **DIP Budget**. The Borrowers have furnished to Lender the Initial DIP Budget, which Initial Budget was prepared in good faith upon assumptions the Borrowers believed to be reasonable as of the Interim Order Entry Date.

Section 4.16 **Survival; Updates of Representations and Warranties**. All representations and warranties contained in or made in connection with this Agreement and the other Loan Documents shall survive the Effective Date and any advance made hereunder. Lender acknowledges and agrees that any and all representations and warranties contained in or made under or in connection with this Agreement may be amended, changed or otherwise modified by the Borrowers, with the consent of Lender, at any time and from time to time after the Effective Date so as to accurately reflect the matters represented and warranted therein; provided, that such amendments, changes and/or modifications are disclosed in writing to and approved by Lender. Lender shall have no obligation to waive any Event of Default due to any present or future inaccuracy of such representation or warranty or to agree to any amendment, change or modification of such representation or warranty.

ARTICLE 5

[RESERVED]

ARTICLE 6
REPORTING AND INFORMATION

Section 6.1 **Projections**. On or before the Friday of every other calendar week (or, solely to the extent any applicable Friday is not a Business Day, on or before the next Business Day), commencing with the first week following the Effective Date, the Borrowers shall deliver to Lender financial projections that set forth: (i) projections of the weekly cash flows for the 8-week period commencing on the first day of such fiscal week (the "**Cash Flow Projections**") that reflect the Borrowers' consolidated projected cash receipts and cash expenditures for their corporate and other operations; and (ii) a Variance Report comparing, for each line of such Cash Flow Projections, the actual disbursements and receipts for the previous reporting weeks and the variance of such actual results from those projected for such previous reporting week on the most current Cash Flow Projections delivered under the terms of this Agreement prior to such date. Upon Lender's request and upon reasonable notice, the Borrowers and the Borrower Financial Advisor shall (and the Borrowers shall cause the Borrower Financial Advisor to) participate in a telephone call with Lender whereby the Borrowers and the Borrower Financial Advisor shall provide an explanation of any material variance between the projected weekly cash flows and the actual disbursements and receipts for any fiscal week.

Section 6.2 **Access to Books and Records**. Each Borrower shall, and shall cause each of its Subsidiaries to, keep and maintain proper and current books and records in accordance with GAAP and permit Lender and its agents and representatives, upon prior reasonable notice and during normal business hours, (i) to examine and produce copies of, as applicable, all of the facilities, processes, records, books, records and papers of such Borrower or such Subsidiary and (ii) to discuss the financial books, records, and finances of the Borrowers and their respective Subsidiaries with any of its officers and managers and such Borrower's or such Subsidiary's independent accountants. All reasonable costs and expenses of such inspections, examinations and discussions shall be paid by the Borrowers.

Section 6.3 **Reporting**.

(i) Promptly after the occurrence of a Default or Event of Default, Borrowers shall deliver to Lender notice thereof together with a description of the nature and effect of such event and the remedial steps being taken by the Borrowers as a result thereof.

(ii) Promptly (and in any event, within two (2) Business Days) after delivery thereof, of (a) any written notice from any Governmental Authority of any investigation or audit, or pending or threatened proceedings relating to, any violation by the Borrowers or any Subsidiary of any Applicable Laws solely to the extent the same would reasonably be expected to result in any liability to any Borrower or any Subsidiary and (b) any certificates, notices and other information delivered to such Borrower by, or received by such Borrower with respect to any license, Permit, certification, approval and the like required by the Applicable Law of the jurisdictions in which such Borrower conducts its business.

(iii) Each Borrower shall promptly (and in any event, within two (2) Business Days) notify Lender in writing of (a) any condition or event which constitutes (or which upon the giving of notice or lapse of time, or both would constitute) an Event of Default under this Agreement or any other Loan Documents, including any event or circumstance which causes any information which has previously been provided by such Borrower to Lender to include an untrue statement of material fact or to omit to state any material fact or any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and, in such event, such Borrower shall promptly (and in any event, within two (2) Business Days) furnish to Lender updated or revised information which will correct such untrue statement or include such omitted fact; (b) any written notice of default received by such Borrower or its Subsidiaries or otherwise material to such Borrower's or such Subsidiary's business; (c) any threatened or pending legal, judicial or regulatory proceedings or investigation, including any dispute between such Borrower or such Subsidiary and any Governmental Authority affecting such Borrower or such Subsidiary; and (d) any event causing extraordinary loss or depreciation of the value of such Borrower's or Such Subsidiary's assets (whether or not insured) or business and the facts with respect thereto.

Section 6.4 **Other Information**. So long as there are any Obligations or Commitments outstanding under the Loan Documents and prior to the termination of the Loan Documents, each Borrower shall deliver to Lender (a) any financial information shared with the U.S. Trustee and any other third-party Person in connection with the Cases and (b) such other financial information as Lender reasonably requests, and shall cause each Subsidiary to, provide Lender copies of all material certificates, notices and other information delivered to such Borrower by, or received by such Borrower or such Subsidiary from, any other contract counterparty (including, without limitation, in respect of Material Contracts), contemporaneously with such delivery or promptly (and in any event, within two (2) Business Days) after such receipt.

ARTICLE 7
COVENANTS

Each Borrower covenants and agrees with Lender that, so long as Borrower has any outstanding Obligations (other than unasserted contingent Obligations) under the Loan Documents:

Section 7.1 **Due on Sale and Encumbrances; Authority Documents**.

(1) No Borrower, nor any Subsidiary thereof, shall (a) sell, convey, assign or otherwise transfer its properties, assets or contractual rights other than in the ordinary course of business and consistent with past practice in accordance with the DIP Budget or Sale Order, (b) make any investments or distributions on account of the Equity Interest of its direct or indirect parent, or (c) mortgage, pledge, encumber, alienate, grant any other Lien on or grant any other interest in its properties or assets other Liens in favor of Lender (other than Permitted Liens); and

(2) No Borrower, nor any Subsidiary thereof, shall amend, modify, or otherwise supplement its respective Authority Documents.

Section 7.2 **Taxes on Security**. Each Borrower and its respective Subsidiaries shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Liens (if any) created or secured by the Loan Documents. If there shall be enacted any law changing existing laws of taxation of security interests, mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, such Borrower or such Subsidiary shall immediately pay to Lender, on demand, all additional taxes, costs and charges for which Lender is or may be liable as a result thereof.

Section 7.3 **Limitations on Other Debt**. No Borrower, nor any of its Subsidiaries, shall incur any Debt (whether secured or unsecured) (other than Permitted Debt). Notwithstanding anything to the contrary, other than with respect to the Carve-Out, no Debt shall be permitted to have an administrative expense claim status under the Bankruptcy Code senior to or *pari passu* with the super priority administrative expense claims of Lender as set forth herein and in the DIP Orders.

Section 7.4 **Compliance with Laws, etc.** Each Borrower shall, and shall cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, and all licenses and Permits and comply with all Applicable Laws, rules, statutes, regulations and ordinances.

Section 7.5 **Continued Business Operations**.

(1) Each Borrower shall, and shall cause its Subsidiaries to, continue to conduct such Borrower's and such Subsidiary's business operations in substantially the same manner as is currently being conducted. Each Borrower shall, and shall cause its Subsidiaries to, keep or cause to be kept adequately insured by financially sound and reputable insurers such Borrower's and such Subsidiary's business activities in the manner usually insured by businesses engaged in the same or similar businesses. Without limiting the generality of the foregoing, each Borrower shall, and shall cause its Subsidiaries to, at all times maintain adequate business liability insurance applicable to such Borrower's or such Subsidiary's operations.

(2) Each Borrower shall, and shall cause its Subsidiaries to, use their best efforts to (a) preserve, renew and keep in full force and effect all Material Contracts and (b) not cause any Material Contract to cease to be in full force and effect (whether by termination by any party, lapse or otherwise).

(3) Each Borrower shall, and shall cause of its Subsidiaries to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect all licenses, Permits, certifications, approvals and the like required by the Applicable Law of the jurisdictions in which such Borrower or such Subsidiary conducts its business and (b) not permit any license, Permit, certification, approval and the like required by the Applicable Law of the jurisdictions in which such Borrower or such Subsidiary conducts its business to cease to be in full force and effect (whether by termination by any party, grantee or grantor with respect thereto, lapse, expiration or otherwise).

Section 7.6 **Prohibited Actions**. No Borrower shall, nor shall it permit any of its Subsidiaries' to, (a) enter into any agreements other than in the ordinary course of business and consistent with past practice or any agreements adversely affecting the operation of such Borrower's or such Subsidiary's business or amend or terminate any existing agreement other than in the ordinary course of business and consistent with past practice, (b) enter into any line of business substantially different from those lines of business conducted by such Borrower or such Subsidiary on the date hereof or any business substantially related or incidental thereto; (c) make loans or advances to any person or entity; (d) engage in, or seek or consent to, any dissolution, winding up, liquidation, consolidation, merger or asset sale unless otherwise expressly permitted hereby; (e) enter into or be a party to any transaction with its equityholders, members or any of its affiliates, except on terms that are no less favorable to any party thereto than would be obtained in a comparable arm's length transaction with an unrelated third party; (f) change its name; (g) use any trade name other than such Borrower's true name; and/or (h) commence any legal action or proceeding against any person or settle any legal action or proceeding against such Borrower or such Subsidiary brought by any third party or Governmental Authority other than in connection with the Cases (so long as such action or proceeding is not against or otherwise adverse to the interests of the Lender or the Prior Lender and such settlement is not adverse to the interests of the Lender or the Prior Lender).

Section 7.7 **Permitted Activities**. Notwithstanding anything to the contrary contained herein, none of Regenevida, Surrogen, Therillume or Acceligen Do Brasil Biotecnologia e Pesquisa Cientifica LTDA will engage in any material operating or business activities including, without limitation, the formation of any subsidiary or the acquisition of any Person; provided, that the following, and any activities incidental thereto, shall be permitted in any event: (1) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance); (2) activities required to comply with any Applicable Law, including the filing of tax reports and paying taxes and other customary obligations in the ordinary course (and contesting any taxes); (3) holding any cash or cash equivalents on a temporary basis; and (4) any activities incidental or reasonably related to the foregoing.

Section 7.8 **Further Assurances**. Each Borrower shall (a) cure any defects in the execution and delivery of the Loan Documents, and (b) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Lender may reasonably request to further evidence and more fully describe the collateral for the Loans, to correct any omissions in the Loan Documents, or to obtain any consents as may be necessary or appropriate in connection therewith.

Section 7.9 **Borrower Financial Advisor; Sale Process and Transaction.**

(1) Lender shall have the rights set forth in the Bidding Procedures.

(2) Each Borrower irrevocably authorizes the Borrower Financial Advisor to (i) regularly consult with, and respond to the reasonable inquiries of, Lender concerning the finances and businesses of the Borrowers, the assets and capital stock of the Borrowers and the sale process or any refinancing transaction and (ii) provide periodic updates to Lender (which may be provided telephonically), in each case at such times as Lender may reasonably request, to discuss progress and developments regarding the sale or any refinancing.

(3) The Borrowers shall, and shall cause each of their Subsidiaries to, comply with the following deadlines (each a "**Sale Milestone**"), and the Borrowers hereby acknowledge and agree that, by entering into this Agreement or otherwise, the Lender does not consent to, and nothing contained herein shall be deemed to be a consent to, any particular Sale Transaction or other Disposition of assets of the Borrowers:

(a) No later than three (3) Business Days after the Petition Date, entry by the Bankruptcy Court of the Interim DIP Order;

(b) No later than ten (10) calendar days after the Petition Date, entry by the Bankruptcy Court of an order approving (i) the Asset Purchase Agreement and (ii) the Bidding Procedures for the Purchased Assets and preserving Lender's rights pursuant to section 363(k) of the Bankruptcy Code, which order shall be in form and substance acceptable to the Lender (such order, the "**Bidding Procedures Order**");

(c) No later than twenty-five (25) calendar days after the Petition Date, entry by the Bankruptcy Court of the Final DIP Order;

(d) No later than December 11, 2024, the submission deadline for all bids for the sale of the Purchased Assets as set forth in the Bidding Procedures;

(e) No later than December 13, 2024, holding of an auction (if necessary) for the sale of the Purchased Assets as set forth in the Bidding Procedures;

(f) No later than December 20, 2024, entry by the Bankruptcy Court of the Sale Order (as defined in the Asset Purchase Agreement); and

(g) No later than January 2, 2025, consummation of the sale of the Purchased Assets.

(4) **Case Matters.**

(a) All Professional Fees at any time paid by the Borrowers, or any of them, shall be paid by the Borrowers pursuant to procedures established by an order of the Bankruptcy Court and, so long as there are any Obligations or Commitments outstanding under the Loan Documents and prior to the termination of the Loan Documents, pursuant to the DIP Budget.

(b) The Borrowers will not return any inventory or other property to any vendor pursuant to section 546(g) of the Bankruptcy Code, unless otherwise ordered by the Bankruptcy Court in accordance with section 546(g) of the Bankruptcy Code upon prior notice to Lender or unless otherwise consented to by Lender.

(c) No Borrower shall submit to the Bankruptcy Court a Chapter 11 Plan without the prior written consent of Lender, unless such Chapter 11 Plan will indefeasibly pay the Obligations and the Prepetition Obligations (to the extent not refinanced by or otherwise included in the Roll-Up Loan) in full, in cash and terminate any commitment to extend credit hereunder.

(d) No Borrower shall propose to the Bankruptcy Court, or otherwise, a sale of all or substantially all of the Collateral, without the prior written consent of Lender, unless such sale will indefeasibly pay the Obligations and the Prepetition Obligations (to the extent not refinanced by or otherwise included in the Roll-Up Loan) in full, in cash and terminate any commitment to extend credit hereunder.

Section 7.10 **Disbursements, DIP Budget Variance and Updated DIP Budget.**

(1) The Borrowers may not make any disbursements other than those set forth in the DIP Budget (taking into account the Permitted Variance).

(2) Borrowers shall deliver to Lender a certificate signed by a Responsible Officer of the Lead Borrower, on the Friday of each other week (or the succeeding Business Day if such Friday is not a Business Day), commencing on November 22, 2024, (a) certifying the aggregate cash disbursements (without consideration of Professional Fees) and receipts, for the two weeks ended (and on a cumulative basis since the Petition Date) the immediately prior Friday, (b) certifying amount of cash disbursements for Professional Fees for the two weeks ended (and on a cumulative basis since the Petition Date) the immediately prior Friday, (c) attaching a variance report (the "**Variance Report**") for the immediately preceding two-week Variance Period comparing, in each case, (i) the actual aggregate operating cash flow for such Variance Period (without consideration of Professional Fees) which shall not be below the projected operating cash flow for such Variance Period by more than the larger of ten percent (10%) or $40,000 and (ii) the actual aggregate cumulative cash disbursements with respect to Professional Fees for such Variance Period which shall not exceed the projected cash disbursements with respect to Professional Fees for such period, and, in each case, as set forth in the DIP Budget for such two-week look-back period (the "**Variance Period**" and, such variance permitted (if any) herein during each Variance Period, the "**Permitted Variance**").

(3) Every second Friday, commencing on November 22, 2024, the Lead Borrower shall deliver to Lender an updated budget (the "**Proposed DIP Budget**") which shall reflect the Borrowers' good faith projection of all weekly receipts and disbursements in connection with the operation of the Borrowers and their respective Subsidiaries business from the Petition Date through the Sale Milestone set

forth in Section 7.9(3)(g) with the same line items (other than dollar amounts) as the Initial DIP Budget. Such Proposed DIP Budget shall become the "DIP Budget" then in effect if Lender (a) approves such Proposed DIP Budget (which approval may be provided to Lead Borrower or Borrower Financial Advisor by email), or (b) does not object to the Proposed DIP Budget within three (3) Business Days after Lender's receipt of the Proposed DIP Budget (which objection may be provided to Lead Borrower or Borrower Financial Advisor by email); *provided* that if Lender does object to the Proposed DIP Budget within three (3) Business Days after its receipt thereof, the then current DIP Budget will remain in effect until such time as a subsequent Proposed DIP Budget becomes the "DIP Budget" in accordance with the foregoing terms, with Permitted Variances assessed cumulatively against the most recently approved DIP Budget (or the Initial DIP budget should that remain in effect). If at any time there is no approved DIP Budget in effect for the current period (and on a cumulative basis since the Petition Date), such event shall be an immediate Event of Default hereunder.

Section 7.11 **Exclusive Period**. Between October 3, 2024, and October 11, 2024, and between October 24, 2024, and the date upon which the Bankruptcy Court approves the Bidding Procedures (provided that if the Bidding Procedures cannot be approved on an expedited basis, the Borrowers may commence marketing their assets in accordance with the Bidding Procedures upon the Bankruptcy Court's approval of the bidding protections in favor of the Lender (or its designated affiliate) set forth in the Bidding Procedures) (the "**Exclusive Period**"), (i) Lender (or its designated affiliate) and the Borrowers shall in good faith pursue a "stalking horse" transaction in connection with a sale of all or substantially all of the Borrowers' assets pursuant to section 363 of the Bankruptcy Code (such transaction as agreed to by the parties in their sole discretion, the "**Transaction**") and (ii) in return for Lender's agreement to expend the time and incur the expenses related to pursuing the Transaction, during the Exclusive Period, the Borrowers shall, and shall cause each of their respective Affiliates, preferred stockholders, officers, directors, employees, agents and representatives (the "**Collective Transaction Parties**") to, (i) terminate all discussions, negotiations, correspondence, information sharing and other contact with any one or more third parties relating to any proposed transaction involving the sale, disposition or other transfer of all or any portion of the business or any other transaction (collectively, a "**Competing Transaction**"); (ii) not submit, solicit, initiate, encourage or discuss any proposal or offer from any person (other than Lender and its designated affiliates) or enter into any agreement or accept any offer relating to or consummating any Competing Transaction; (iii) not furnish any information with respect to, assist or participate in or facilitate in any other manner any effort or attempt by any person (other than Lender and its designated affiliates) to do or seek to do any of the foregoing; (iv) disclose to Lender if the Collective Transaction Parties receive an offer for a Competing Transaction from another party in verbal or written form).

Section 7.12 **Amendments to Orders**. No Borrower nor any of its Subsidiaries shall amend, modify or waive (or make any payment consistent with an amendment, modification or waiver of), or apply to the Bankruptcy Court for authority to make any amendment, modification or waiver of, any provision of the Interim DIP Order, the Cash Management Order, the Sale Order or the Final DIP Order without in each case the prior written consent of Lender in its sole discretion.

ARTICLE 8
EVENTS OF DEFAULT

Each of the following shall constitute an "**Event of Default**" under this Agreement or any other Loan Document:

Section 8.1 **Payments**. Any Borrower's failure to pay (a) any payment of principal, interest, fees or other amount due under the Loan Documents when and as due, (b) any payment obligations under the DIP Orders when and as due, and/or (c) the Loans at the Maturity Date, whether by acceleration or otherwise.

Section 8.2 **Covenants**. Any Borrower's failure to perform or observe any of the agreements and covenants contained in this Agreement or any other Loan Document.

Section 8.3 **Representations and Warranties**. Any representation or warranty made in any Loan Document or in any financial statement, application, schedule, report or any other document given by any Borrower under any Loan Document proves to be untrue in any material respect (except to the extent such representation or warranty is qualified by materiality or "material adverse effect" in which case such representation or warranty shall be true and correct in all respects) when made or deemed made, or if any warranty shall cease to be complied with in any material respect, or if any Borrower omitted to state any material fact necessary to make such information not misleading.

Section 8.4 **Chapter 11 Exclusivity**. An order shall be entered terminating or reducing Borrowers' exclusivity period for proposing a Chapter 11 Plan (to the extent such motion is not made by Lender).

Section 8.5 **Sale Milestones and Variance**. Failure of any Borrower to comply with any of the Sale Milestones; provided that Lender may agree to an extension of any of the Sale Milestone dates in its sole and absolute discretion. The actual amount of aggregate cumulative disbursements for a Variance Period exceeds the projected cumulative disbursements in the DIP Budget for such Variance Period by more than a Permitted Variance.

Section 8.6 **Business Change**. Any Borrower, or any of its Subsidiaries, consummates any (i) dissolution, liquidation, consolidation or merger with or into any other business entity, (ii) any transaction which results in a Change of Control, or (iii) any sale of all or substantially all assets of the Borrowers pursuant to section 363 of the Bankruptcy Code or entry into an agreement obligating any Borrower to consummate any such sale, other than a sale pursuant to the Asset Purchase Agreement.

Section 8.7 **Business Disruption**. Any Borrower or any of its respective Subsidiaries is enjoined, restrained or in any way prevented by order of a court or regulatory agency from continuing to conduct all or any part of its business affairs for a period in excess of five (5) consecutive days.

Section 8.8 **Other Encumbrances**. If a judgment or other claim becomes or is otherwise any Lien or encumbrance upon any portion of any Borrower's assets, other than a Permitted Lien.

Section 8.9 **Loan Documents**. Any of the Loan Documents or the security interests and Liens thereunder are challenged by any Borrower or any Loan Document is revoked or rescinded by any Borrower.

Section 8.10 **Collateral**. (A) the failure of Lender to have a perfected first priority security interest in the Collateral subject only to the Carve-Out and Prepetition Permitted Liens or (B) a forfeiture or loss of all or a material portion of the Collateral to any Governmental Authority.

Section 8.11 **Cross-Default**. (A) Any Borrower or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise but subject to any applicable grace periods applicable thereto) or otherwise fails to observe or perform any other agreement or condition relating to any Debt or guarantee having an aggregate principal amount in excess of $750,000 contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Debt or the beneficiary or beneficiaries of such guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, prior to its stated maturity, or such guarantee to become payable or cash collateral in respect thereof to be demanded (subject, in each case, to any applicable grace or cure periods applicable thereto and after giving effect to any amendments or waivers thereof); provided that, this clause (A) shall not apply to any such condition described in this clause (A) that exists on the Effective Date and that any such Borrower or Subsidiary has knowledge thereof; or (B) a material breach of the Asset Purchase Agreement occurs, other than as a result of Lender's material breach;

Section 8.12 **Case Orders**.

(1) An order shall be entered in any of the Cases appointing, or any Borrower shall file an application for an order with respect to any of the Cases seeking (x) the appointment of, in either case without the prior written consent of Lender, (i) a trustee under section 1104 of the Bankruptcy Code or (ii) an examiner or any other Person with enlarged powers relating to the operation of the business (i.e., powers beyond those set forth in sections 1104(d) and 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code or (y) a change of venue with respect to any Case or any related adversary proceeding.

(2) An order shall be entered, without the prior written consent of Lender (as determined in its sole discretion), dismissing a Case or converting a Case to a case under chapter 7 of the Bankruptcy Code.

(3) An order shall be entered with respect to the Case or Cases, without the prior written consent of Lender, (i) to revoke, reverse, stay, vacate or otherwise modify the DIP Orders, (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority equal or superior to the priority of Lender in respect of the Obligations other than the Carve-Out, (iii) terminating or denying the use of cash collateral, or (iv) granting or permitting the grant of a lien that is equal in priority with or senior to the liens securing the Obligations other than the Carve-Out.

Section 8.13 **Automatic Stay**. An order shall be entered, without the prior written consent of Lender (as determined in its sole discretion), that is not stayed pending appeal granting relief from the Automatic Stay to any creditor of a Borrower (other than Lender) with respect to any claim against any property.

Section 8.14 **Chapter 11 Plan.** The filing or entry of an order by the Bankruptcy Court confirming a Chapter 11 Plan in any of the Cases which does not (i) contain a provision for termination of all commitments to extend credit hereunder and indefeasible payment in full in cash of all Obligations hereunder and under the other Loan Documents and all Prepetition Obligations under the Prepetition Credit Agreement on or before the effective date of such plan or plans upon entry thereof and (ii) provide for the continuation of the Liens and security interests granted to Lender for the benefit of Lender with the same priorities under the DIP Orders until such plan effective date.

Section 8.15 **Violation of DIP Orders.** A material violation by any Borrower or Subsidiary thereof of any of the provisions of or any violation by any Borrower or Subsidiary thereof of the material provisions of, in each case, the DIP Orders, the Cash Management Order, the Bidding Procedures Order or the Sale Order occurs.

Section 8.16 **Rejection of Contracts.** Any Borrower rejects or assumes an unexpired lease or other contract, other than with the prior written consent of Lender in its sole discretion.

Section 8.17 **Litigation Regarding DIP Liens.** Any Borrower, any of Borrowers' Affiliates, any creditor or any official committee of creditors commences, or supports, any person, in any litigation challenging or seeking to challenge the DIP Liens or the Prepetition Liens or Prepetition Obligations against Lender.

Section 8.18 **Payments of Debt.** Any Borrower shall make a payment or grants adequate protection with respect to Debt existing prior to the Petition Date (other than as permitted under this Agreement, the DIP Orders or the "first day" orders or otherwise and approved by Lender and the Bankruptcy Court).

Section 8.19 **Post-Petition Payments**. Any Borrower or any Subsidiary thereof fails to make any post-petition payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Contract or fails to observe or perform any other material agreement or condition relating to any such Material Contract or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such Material Contract to terminate such Material Contract, in each case, except to the extent as permitted with the express prior consent of the Lender in its sole discretion.

Section 8.20 **Asset Purchase Agreement; Exclusivity**. Any Termination of the Asset Purchase Agreement; unless such termination (x) was caused by, or the result of, a breach by Buyer (as defined in the Asset Purchase Agreement) of its obligations thereunder, or (y) is the result of a party other than Buyer being selected as the Winning Bidder (as defined in the Bidding Procedures Order) with respect to the sale of the assets specified in the Asset Purchase Agreement.

ARTICLE 9
REMEDIES

Section 9.1 **Remedies**.

(1) If an Event of Default exists, the Lender may, at any time or times and in any order, without notice to or demand on any Borrower (except for such notice or consent that is expressly provided for hereunder, under the DIP Orders, or required by applicable law): (i) restrict the amount of or refuse to permit the Lender to fund any Loans (other than with respect to the Post-Carve Out Trigger Notice Reserve), (ii) terminate any commitment to extend any credit hereunder (other than with respect to the Post-Carve Out Trigger Notice Reserve), and thereupon such commitments shall terminate immediately, (iii) declare the Obligations then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be immediately due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be immediately due and payable, together with accrued interest thereon and all fees and other Obligations of the Borrowers accrued hereunder and under the other Loan Documents, shall become due and payable immediately, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by the Borrowers, (iv) exercise the right (after providing three (3) Business Days' prior notice to the Borrowers and the U.S. Trustee to realize on all Collateral without the necessity of obtaining any further relief or order from the Bankruptcy Court (such three (3) Business Day period, the "**Remedies Notice Period**"), subject to the right of the Borrowers to seek a determination by the Bankruptcy Court that such Event of Default has actually occurred and is continuing, which must be heard during such Remedies Notice Period; *provided* that, to the extent that any Borrower seeks such determination by the Bankruptcy Court, the Borrowers may only make cash disbursements during such Remedies Notice with respect to employee payroll and no other amounts payable by the Borrowers); and (iv) pursue its other rights and remedies under the Loan Documents, the DIP Orders and/or applicable law. Except as otherwise provided in the DIP Orders, the foregoing remedies may be exercised without demand and without further application to or order of the

Bankruptcy Court. In any hearing regarding any exercise of remedies under this Section 9.1(1) (which hearing must take place within the Remedies Notice Period), the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing and neither the Borrowers nor any other parties in interest (including, but not limited to, any official committee of unsecured creditors) shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of Lender set forth in the DIP Orders, this Agreement or the Loan Documents, as applicable. If no such order is entered during the Remedies Notice Period, all use of the Collateral shall cease and the Lender shall be entitled to enforce the remedies hereunder.

(2) While any Event of Default exists, Lender shall have no obligation to make any Loans hereunder. Upon the occurrence of an Event of Default, at the option and upon the declaration of Lender, (x) all Obligations (including, without limitation, any and all costs and expenses, including professional fees) shall be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, and the Default Rate will apply in accordance with Section 2.5; and (y) the Commitments and obligation, if any, of Lender to make any further Loans hereunder shall be terminated.

(3) Upon the occurrence of an Event of Default, Lender may, immediately enforce payment of all amounts due and owing under the Loan Documents and exercise all rights and remedies therefor under the Loan Documents and at law or in equity, including, without limitation, instituting any proceeding or proceedings to enforce the Obligations. The rights, powers and remedies of Lender under the Loan Documents shall be in addition to all rights, powers and remedies given to Lender by virtue of any statute or rule of law, or any other agreement between Lender and any Borrower, all of which rights, powers and remedies shall be cumulative and may be exercised successively or concurrently without impairing Lender's rights in any security interests created by the Loan Documents.

(4) The acceptance of any payment by any Borrower to Lender shall not be deemed to cure or constitute a waiver of any Event of Default and Lender retains its rights under this Agreement and the other Loan Documents to accelerate and to continue to demand payment of the Loan upon the happening of any Event of Default, despite any payments made to Lender after the occurrence of such Event of Default.

(5) Lender's exercise of any right or remedy which has the effect of remedying an Event of Default under the Loan Documents shall not constitute a cure or waiver of such Event of Default.

(6) The failure of Lender to insist upon strict performance of any term, covenant or condition contained in the Loan Documents shall not be deemed to be a waiver, modification, amendment or estoppel with respect to the enforcement of such term, covenant or condition. No Borrower shall be relieved or released from its Obligations by reason of (a) the failure of Lender to comply with any request of such Borrower to take any action to enforce any of the provisions of the Loan Documents; (b) the release, regardless of consideration, of any Person liable for the Loan or any portion thereof; or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Loan Documents. The rights of Lender under each of the Loan Documents shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision of any Loan Document to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

(7) Upon the occurrence and during the continuance of any Event of Default, Lender may declare all Obligations hereunder immediately due and payable and terminate all commitments to lend or extend credit hereunder, shall have, in addition to any remedies provided herein or by any Applicable

Law or in equity, all the remedies of a Lender under the UCC. All of the rights and remedies of Lender, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently by Lender. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of the Borrowers under this Agreement, after failure to perform, shall not affect the right of Lender to declare a default and to exercise remedies available to Lender under this Agreement. Nothing under this Agreement or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender under this Agreement following the occurrence and during the continuance of an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against the Borrowers and/or to proceed against any other collateral directly or indirectly securing the Obligations. Nothing under this Agreement or otherwise shall be construed so as to require Lender to proceed against or resort to any collateral directly or indirectly securing the Obligations at any time.

(8) Without limiting the generality of the foregoing, upon the occurrence and during the continuance of an Event of Default, Lender, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below or as otherwise required herein) to or upon the Borrowers or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof, which rights shall include, without limitation, the right to (a) peaceably by its own means or with judicial assistance enter the premises of the Borrowers and take possession of the Collateral without prior notice to the Borrowers or the opportunity for a hearing, (b) render the Collateral unusable, (c) dispose of the Collateral on the Borrowers' premises, and (d) require the Borrowers to assemble the Collateral and make it available to Lender at a place designated by Lender. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give the Borrowers reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of commercially reasonable notice shall be met if such notice is sent to the Borrowers at least ten (10) days before the time of the intended sale or disposition. Expenses of retaking, holding, preparing for sale, selling or the like shall include Lender's reasonable attorney's fees and legal expenses, incurred or expended by Lender to enforce any payment due it under this Agreement either as against the Borrowers, as applicable, or in the prosecution or defense of any action, or concerning any matter growing out of or in connection with the subject matter of this Agreement and the Collateral pledged hereunder. Each Borrower waives all relief from all appraisement or exemption laws now in force or hereafter enacted.

(9) Each Borrower hereby irrevocably appoints Lender as its agent and attorney-in-fact, with full power of substitution, in the name of such Borrower, for the sole use and benefit of Lender, but at the expense of such Borrower, to exercise, at any time and from time to time during the continuance of an Event of Default, all or any of the following powers with respect to all or any of the Collateral:

(a) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral;

(b) to endorse such Borrower's name to any instruments, chattel paper and documents comprising part of the Collateral (including endorsing such instruments, chattel paper and documents to Lender (for the benefit of Lender));

(c) to assign, on behalf of such Borrower, any instruments, chattel paper or documents comprising part of the Collateral to Lender (for the benefit of Lender);

(d) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral;

(e) to settle or compromise any and all claims arising under the Collateral, and, in the place and stead of such Borrower, to execute and deliver its release and settlement for the claim; and

(f) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its role as Lender, as applicable, or in the name of such Borrower, or otherwise, which in the discretion of Lender may seem to be necessary or advisable.

This power is given as security for the Obligations, and, upon the occurrence and during the continuation of an Event of Default, the authority hereby conferred is, and shall be, irrevocable and coupled with an interest and shall remain in full force and effect until renounced by Lender.

Section 9.2 **Sales, UCC**.

(1) Each Borrower recognizes that Lender may be unable to effect a public sale of any or all of the Collateral that constitutes securities to be sold by reason of certain prohibitions contained in the laws of any jurisdiction outside the United States or in applicable federal or state securities laws but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral to be sold for their own account for investment and not with a view to the distribution or resale thereof. Each Borrower acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall, to the extent permitted by law, be deemed to have been made in a commercially reasonable manner. Unless required by law, Lender shall not be under any obligation to delay a sale of any of such Collateral to be sold for the period of time necessary to permit the issuer of such securities to register such securities under the laws of any jurisdiction outside the United States or under any applicable federal or state securities laws, even if such issuer would agree to do so. Each Borrower further agrees to do or cause to be done, to the extent that such Borrower may do so under all applicable, all such other acts and things as may be necessary to make such sales or resales of any portion or all of such Collateral or other property to be sold valid and binding and in compliance with any applicable law at Borrowers' expense. Each Borrower further agrees that a breach of any of the covenants contained in this Section 9.2(1) will cause irreparable injury to Lender for which there is no adequate remedy at law and, as a consequence, agrees that each covenant contained in this Section 9.2(1) shall be specifically enforceable against such Borrower, and each Borrower hereby waives and agrees, to the fullest extent permitted by law, not to assert as a defense against an action for specific performance of such covenants that (i) such Borrower's failure to perform such covenants will not cause irreparable injury to Lender or (ii) Lender has an adequate remedy at law in respect of such breach. Each Borrower further acknowledges the impossibility of ascertaining the amount of damages which would be suffered by Lender by reason of a breach of any of the covenants contained in this Section 9.1(1) and consequently, agrees that, if such Borrower shall breach any of such covenants and Lender shall sue for damages for such breach, such Borrower shall pay to Lender, as liquidated damages and not as a penalty, an aggregate amount equal to the value of the Collateral or other property to be sold on the date Lender shall demand compliance with this Section 9.2(1).

(2) If an Event of Default has occurred and is continuing, Lender shall have, in addition to all other rights of Lender, the rights and remedies of a secured party under the UCC, and without limiting the generality of the foregoing, Lender shall be empowered and entitled to, subject to the terms of the DIP Orders: (i) take possession of, foreclose on and/or request a receiver of the Collateral and keep it

on any Borrower's premises at any time, at no cost to Lender, or remove any part of it to such other place or places as the Lender may determine, or the Borrowers shall, upon Lender's demand, at the Borrowers' cost, assemble the Collateral and make it available to the Lender at a place convenient to the Lender; (ii) sell and deliver any Collateral at public or private sales, for cash, upon credit, or otherwise, at such prices and upon such terms as Lender deems advisable, in its sole discretion, and may postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale; (iii) hold, lease, develop, manage, operate, control and otherwise use the Collateral upon such terms and conditions as may be reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as may be reasonably necessary or desirable), exercise all such rights and powers of each Borrower with respect to the Collateral, whether in the name of such Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all rents, in each case, in accordance with the standards applicable to the Lender under the Loan Documents, (iv) employ consultants to inspect the Collateral and to assure compliance by each Borrower of the terms and conditions of the Loan Documents and (v) take any other actions, as may be necessary or desirable, in connection with the Collateral (including preparing for the disposition thereof), and all actual, out-of-pocket fees and expenses incurred in connection therewith shall be borne by the Borrowers. Upon demand from the Lender, the applicable Borrower shall direct the grantor or licensor of, or the contracting party to, any property agreement with respect to any Property to recognize and accept the Lender as the party to such agreement for any and all purposes as fully as it would recognize and accept such Borrower and the performance of such Borrower thereunder and, in such event, without further notice or demand and at such Borrower's sole cost and expense, the Lender may exercise all rights of such Borrower arising under such agreements. Without in any way requiring notice to be given in the following manner, each Borrower agrees that any notice by the Lender of sale, disposition, or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to such Borrower if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least ten (10) Business Days prior to such action to the Borrower's address in accordance with <u>Section 11.1</u> of this Agreement. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Lender receive payment, and if the buyer defaults in payment, the Lender may resell the Collateral. In the event the Lender seeks to take possession of all or any portion of the Collateral by judicial process, each Borrower irrevocably waives: (A) the posting of any bond, surety, or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Lender retain possession and not dispose of any Collateral until after trial or final judgment. Each Borrower agrees that the Lender has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The proceeds of sale shall be applied as set forth in the DIP Orders. The Lender will return any excess to the Borrowers and the Borrowers shall remain liable for any deficiency.

ARTICLE 10
<u>COLLATERAL</u>

Section 10.1 **<u>Grant of Security Interest</u>**.

(1) To secure the payment and performance in full of the Obligations, each Borrower hereby assigns and grants to Lender a continuing Lien (subject only to Permitted Liens) on and security interest in the Collateral. Each Borrower hereby irrevocably authorizes Lender at any time and from time to time to file in any UCC jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of such Borrower or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other

information required by part 5 of Article 9 of such UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including, but not limited to (i) whether such Borrower is an organization, the type of organization and (ii) any organization identification number issued to such Borrower. Each Borrower agrees to furnish any such information to Lender promptly upon request. Each Borrower also ratifies its authorization for Lender to have filed in any UCC jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.

(2) However, notwithstanding anything to the contrary, subject to the Carve-Out, pursuant to Bankruptcy Code Section 364(c)(1), Lender has been granted a superpriority administrative claim over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code. As collateral for the Loans and security for the full and timely payment and performance of all Obligations when due (whether at stated maturity, by acceleration or otherwise), Lender is hereby granted (i) pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected first priority Lien on the Collateral that is otherwise unencumbered as of the commencement of the Cases, including avoidance actions under sections 502(d), 544-553 of the Bankruptcy Code or the proceeds therefrom, or as otherwise recovered under section 506(c) or any other avoidance actions under the Bankruptcy Code; (ii) pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected Lien on all Collateral of the Borrowers (other than the assets referred to in the following clause), junior only to (A) the valid, perfected and non-avoidable Liens on such assets as of the Petition Date that constitute Prepetition Permitted Liens, and (B) valid Liens in existence at the time of the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code; and (iii) pursuant to section 364(d)(1) of the Bankruptcy Code, a perfected senior priming Lien on all of the Borrowers' Collateral that is subject only to the Carve-Out and the Prepetition Permitted Liens.

Section 10.2 **Change in Name or Locations**. Each Borrower agrees that (a) such Borrower will not change its name, its chief executive office or organizational identification number, (b) such Borrower will not change its type of organization or jurisdiction of organization and (c) such Borrower will not cause any Equipment or Inventory of such Borrower to be located at any location other than as set forth on Schedule 10.2 attached hereto (or in transit between such locations).

Section 10.3 **Intellectual Property**.

(1) With respect to each Trademark, each Borrower (either itself or through licensees) will, and will cause each of its Subsidiaries to, to the extent material to the conduct of its business, (i) continue to use such Trademark on each and every trademarked class of goods applicable to its then current lines of products and services as reflected in its current catalogs, brochures, price lists and other sales materials to the extent necessary to maintain such Trademark in full force and effect free from any reasonable claim of abandonment for non-use, (ii) maintain the quality of products and services offered under such Trademark, (iii) reasonably use such Trademark with the appropriate notice of registration and all other notices and legends required by Applicable Law, and (iv) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark is reasonably likely to become invalidated or materially impaired in any way.

(2) No Borrower (either itself or through licensees) will, and will not permit any of its Subsidiaries to, do any act, or knowingly omit to do any act, whereby any Patent is reasonably likely to become forfeited, abandoned or dedicated to the public.

(3) No Borrower (either itself or through licensees) will (and will not permit any licensee or sublicensee thereof to), and will not permit any of its Subsidiaries to, do any act or knowingly

omit to do any act whereby any such Copyright is reasonably likely to become invalidated or otherwise impaired. No Borrower will (either itself or through licensees), and will not permit any of its Subsidiaries to, do any act whereby any such Copyright may fall into the public domain (other than by expiration).

(4) No Borrower (either itself or through licensees) will, and will not permit any of its Subsidiaries to, except as its reasonable business judgment otherwise dictates otherwise, do any act that knowingly infringes the intellectual property rights of any other Person.

(5) Each Borrower will, and will cause each of its Subsidiaries to, to the extent necessary or useful in the conduct of its business, take all necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of any Intellectual Property, including, without limitation, paying of maintenance fees, filing of applications for renewal, affidavits of use and affidavits of incontestability.

(6) Each Borrower shall notify Lender reasonably promptly (and in any event, within two (2) Business Days) if it knows that any United States Patent, Trademark or Copyright owned by such Borrower or any of its Subsidiaries, and is the subject of an application or registration, has or is reasonably likely to become abandoned, lost or dedicated to the public (except by expiration), or of any materially adverse and final determination (including the institution of, or any such materially adverse and final determination in, any proceeding in the United States Patent and Trademark Office or United States Copyright Office, as applicable, in connection with the prosecution of any application for issuance of a Patent or registration of a Trademark or Copyright) regarding such Borrower's ownership of any such Patent, Trademark or Copyright, its right to register the same, or its right to keep and maintain the same.

(7) Each Borrower agrees that, should it obtain an ownership or other interest in any Intellectual Property that constitutes Collateral after the Effective Date, (i) the provisions of this Agreement shall automatically apply thereto and (ii) any such Intellectual Property shall automatically become Intellectual Property subject to the terms and conditions of this Agreement, except, with respect to each of (i) and (ii) above, if such interest in Intellectual Property is obtained under a license from a third party under which the grant of a security interest would not be permitted.

(8) Each Borrower shall, and shall cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect all Intellectual Property owned by such Borrower and/or any IP License (including, without limitation, any IP License with respect to the use of any CRISPR sequence) to which to such Borrower or such subsidiary is a party.

Section 10.4 **Additional Covenants**.

(1) **Possessory Collateral**. As of the date hereof, each Borrower shall have delivered to Lender (or any other custodian approved by Lender) all other instruments and tangible chattel paper included in the Collateral to the extent Lender has requested such delivery.

(2) **Electronic Chattel Paper**. If any Borrower at any time holds or acquires an interest in any Collateral that is electronic chattel paper or a "transferable record," as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Borrower shall promptly (and in any event, within two (2) Business Days) notify Lender thereof and, at the request and option of Lender, shall take such action as Lender may reasonably request to vest in Lender control, under Section 9-105 of the UCC, of such electronic chattel paper or control under Section 201 of the federal

Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.

(3) **No Filings Required; Priority**. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the DIP Orders. Lender shall not be required (but shall have the option and authority) to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, any other Loan Document or the DIP Orders. The DIP Liens in the Collateral will not be junior in priority to any Lien other than the Carve-Out and the Prepetition Permitted Liens (to the extent, and only to the extent, set forth in the DIP Orders).

(4) **Perfection of Security Interests; Further Assurances.**

(a) Notwithstanding the perfection of any security interest granted hereunder pursuant to the order of the Bankruptcy Court under the applicable DIP Order, each Borrower shall, as applicable, at such Borrower's expense, perform all steps requested by the Lender at any time to perfect, maintain, protect, and enforce the DIP Liens, including: upon request by the Lender, delivering to Lender (1) the originals of all certificated Investment Property, instruments, documents, and chattel paper, and all other Collateral of which the Lender should have physical possession in order to perfect and protect the Lender's security interest therein, duly pledged, endorsed, or assigned to the Lender without restriction and (2) certificates of title (excluding deeds for real estate) covering any portion of the Collateral for which certificates of title have been issued and (3) all letters of credit on which such Borrower is named beneficiary. To the fullest extent permitted by applicable law, Lender may file one or more financing statements disclosing the DIP Liens on the Collateral.

(b) Each Borrower shall take any other action reasonably requested by Lender to insure the attachment, perfection and priority of, and the ability of Lender to enforce the security interests including, without limitation, (a) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC, to the extent, if any, that the signature of such Borrower thereon is required therefor, (b) causing the name of Lender, for the benefit of Lender, to be noted as Lender on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of Lender to enforce, the security interests in such Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Lender to enforce, the security interests in such Collateral, including, without limitation, executing and delivering any filings necessary to perfect the security interests in the Intellectual Property, (d) using commercially reasonable efforts to obtain governmental and other third party consents and approvals, including without limitation any consent of any licensor, lessor or other Person with rights in the Collateral, and (e) taking all actions required by any UCC or by other Applicable Law. Each Borrower also hereby appoints Lender and its employees and agents as its irrevocable attorney-in-fact for the purpose of executing and/or filing any documents necessary to perfect or to continue any security interest, such appointment being coupled with an interest and irrevocable until such time as the Obligations (excluding any contingent indemnification claims not yet asserted) are paid and performed in full.

(5) **Notice to Lender**. Each Borrower shall promptly (and in any event, within two (2) Business Days) notify Lender in writing upon such Borrower's knowledge of the filing of any Lien, or that the filing of any Lien has been threatened, on such Borrower or any of the Collateral, other than Permitted Liens.

(6) **Preservation of Collateral**. Each Borrower shall be fully responsible for any losses that any Lender may suffer as a result of anyone other than any Lender (or any custodian on behalf of such Lender) and/or holders of Permitted Liens asserting any rights or interest in or to the Collateral. Each Borrower shall appear in and to defend all actions or proceedings purporting to affect the security rights and interests granted to Lender under this Agreement. In the event that Lender elects to defend any such action or proceeding, each Borrower agrees to reimburse Lender for the reasonable and documented costs associated therewith, including without limitation, the reasonable attorneys' fees of Lender, which costs will be payable upon demand.

(7) **Compliance with Laws**. Each Borrower shall, and shall cause each of its Subsidiaries to, comply in all material respects with all federal, state or local laws applicable to it or in connection with its acquisition of, or any actions taken with respect to, the Collateral.

(8) **Accounts**. No Borrower shall maintain, or cause any of its Subsidiaries to maintain, any Deposit Account, Securities Account or Commodities Account other than such accounts listed on Schedule 4.14(5) hereto. At the request of the Lender, within thirty (30) days of the request therefor, the Borrowers shall deliver to the Lender duly executed and delivered Control Agreements by and among the applicable Borrower, the Lender and, as applicable, the depositary bank or securities intermediary.

(9) **Pledged Shares**. If any Borrower shall be or become entitled to receive or shall receive any certificate in respect of any Pledged Shares (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization of such Pledged Shares), option or rights in respect of any Pledged Shares, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares of the Pledged Shares, or otherwise in respect thereof, such Borrower shall accept and hold the same for the benefit of Lender and promptly (and in any event, within one (1) Business Day) deliver the same forthwith to Lender in the exact form received, duly endorsed by such Borrower to Lender, if required, together with an undated stock transfer power covering such certificate duly executed in blank by such Borrower and otherwise in form and substance reasonably satisfactory to Lender, to be held by Lender as additional Collateral for the Obligations. Notwithstanding the foregoing, with respect to Pledged Shares owned by any Borrower on the Effective Date, such Borrower shall deliver to Lender all certificates and undated stock transfer powers with respect thereto duly executed in blank by such Borrower and otherwise in form and substance reasonably satisfactory to Lender on or prior to the Effective Date.

(10) **Negative Pledge; No Transfer**. No Borrower will sell or offer to sell or otherwise transfer or grant or allow the imposition of a Lien or security interest upon the Collateral (other than Permitted Liens) or use any portion thereof in any manner inconsistent with this Agreement. So long as this Agreement remains in effect, no Borrowers shall, without the prior written consent of Lender compromise, settle, adjust, or extend payment under or with regard to any payment obligations, except in the ordinary course of business.

Section 10.5 **Further Assurances**. Upon the request of Lender, each Borrower will promptly (a) correct any defect, error or omission which may be discovered in any financing statement relating to this Agreement; (b) execute, acknowledge, deliver and record such further instruments (including, without limitation, further security agreements, financing statements, continuation statements and assignments of accounts, contract rights, general intangibles and proceeds) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Agreement as determined by Lender in its reasonable discretion and to more fully identify and subject to the security interest hereof any property intended to be covered hereby, including without limitation any renewals, additions, substitutions, replacements or accessions to the Collateral; (c) execute, acknowledge, deliver and record any document or instrument (including specifically any financing statement) necessary, desirable or proper, as determined by Lender in its reasonable discretion, to protect the Lien and security interest hereunder against the rights or interests of third persons; and (d) execute, deliver and file such filings as Lender in its reasonable discretion deems appropriate, to the extent, if any, that the signature of such Borrower thereon is required therefor. Each Borrower shall pay all reasonable and actually incurred costs connected with any of the foregoing.

Section 10.6 **Limitation on Duty of Lender**. Beyond the exercise of reasonable care in the custody thereof, Lender shall have no duty as to any Collateral in its custody or control or in the custody or control of any agent or bailee or any income thereon. Lender shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession or custody if the Collateral is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Collateral (except for gross negligence, willful misconduct or bad faith of Lender) or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by Lender in good faith.

Section 10.7 **Payment of Expenses**. Each Borrower will reimburse Lender for all documented expenses actually incurred by Lender in connection with the perfection, termination, and the continuation of the perfection of any security interest in the Collateral. At its option, upon the occurrence and during the continuation of an Event of Default, Lender may, but is not required to discharge taxes, Liens, security interests or such other encumbrances as may attach to the Collateral; pay for required insurance on the Collateral; and pay for the maintenance, appraisal or reappraisal, and preservation of the Collateral, as determined by Lender to be necessary. Each Borrower will reimburse Lender on demand for any payment so made or any expense incurred by Lender pursuant to the foregoing authorization in accordance with Section 11.5, and the Collateral also will secure any advances or payments so made or expenses so incurred by Lender.

Section 10.8 **Preservation of Rights**. No delay or omission on Lender's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will Lender's action or inaction impair any such right or power. Lender's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies that Lender may have under other agreements, at law or in equity.

Section 10.9 **Waivers**. Each Borrower has waived, and/or does by these presents waive, presentment for payment, protest, notice of protest and notice of nonpayment under all of the Obligations secured by this Agreement. Each Borrower further agrees that discharge or release of any party who is, may be, or will be liable to Lender under any of the Obligations, or the release of the Collateral or any other collateral directly or indirectly securing repayment of the same, shall not have the effect of releasing or otherwise diminishing or reducing the actual or potential liability of such Borrower and/or any other party or parties guaranteeing payment of the Obligations, who shall remain liable to Lender. Each Borrower additionally agrees that the acceptance of payments by Lender other than in accordance with the terms of any agreement, or agreements governing repayment of the Obligations, or the subsequent agreement of Lender to extend or modify such repayment terms, shall likewise not have the effect of releasing such Borrower, and/or any other party or parties guaranteeing payment of the Obligations, from their respective obligations to Lender under this Agreement and to Lender under the Obligations, and/or of releasing any of the Collateral or other collateral directly or indirectly securing repayment of the Obligations. In addition, no course of dealing between any Borrower and Lender nor any failure or delay on the part of Lender to exercise any of the rights and remedies granted to Lender under this Agreement shall have the effect of waiving any of the rights and remedies of Lender. Any partial exercise of any rights and remedies granted to Lender shall furthermore not constitute a waiver of any other rights and remedies of Lender, it being each Borrower's intent and agreement that the rights and remedies of Lender shall be cumulative in nature. Each Borrower further agrees that, upon the occurrence and continuance of any Event of Default, any waiver or forbearance on the part of Lender to pursue the rights and remedies available to Lender under this Agreement shall be binding upon Lender only to the extent that Lender specifically agrees to any such waiver or forbearance in writing. A waiver or forbearance as to one Event of Default shall not constitute a waiver or forbearance as to any other Event of Default. None of the warranties, conditions, provisions and terms contained in this Agreement or any Loan Document, shall be deemed to have been waived by any act or knowledge of Lender or the agents, officers or employees of Lender; but only by an instrument in writing specifying such waiver, signed by a duly authorized officer of Lender and delivered to the Borrowers.

Section 10.10 **Possession; Sale of Collateral**.

(1) Upon the occurrence and during the continuance of an Event of Default, Lender may: (i) require each Borrower to assemble the tangible assets that comprise part of the Collateral and make them available to Lender at any place or places reasonably designated by Lender; (ii) to the extent permitted by applicable Law and subject to any applicable agreement with the owner of the real property, with or without notice or demand for performance and without liability for trespass, enter any premises where the Collateral may be located and peaceably take possession of the same, and may demand and receive such possession from any person who has possession thereof, and may take such measures as it may deem necessary or proper for the care or protection thereof (including, but not limited to, the right to remove all or any portion of the Collateral); and (iii) with or without taking such possession may sell or cause to be sold, in one or more sales or parcels, for cash, on credit or for future delivery, without assumption of any credit risk, all or any portion of the Collateral, at public or private sale or at any broker's board or any securities exchange, without demand of performance or notice of intention to sell or of time or place of sale, except ten (10) Business Days' written notice to the applicable Borrower of the time and place of such sale or sales (and such other notices as may be required by applicable statute, if any, and which cannot be waived), which each Borrower hereby expressly acknowledge is commercially reasonable. Lender shall have no obligation to clean-up or otherwise prepare any Collateral for sale. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Borrower, and each Borrower hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal that such Borrower now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as Lender may (in its sole and absolute discretion) determine. Lender shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. Lender may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Lender may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any disposition of the Collateral. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by Lender until the sale price is paid by the purchaser or purchasers thereof. Lender shall not incur any liability for the failure to collect or realize upon any or all of the Collateral or for any delay in doing so and, in case of any such failure, shall not be under any obligation to take any action with respect thereto; provided, such Collateral may be sold again upon like notice. If any Collateral is sold upon credit, the applicable Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the Obligations in accordance with this Agreement. In the event the

purchasers fail to pay for the Collateral, Lender may resell the Collateral. At any public sale, or, to the extent permitted by applicable law, at any private sale, made pursuant to this Agreement, Lender may bid for or purchase, free from any right of redemption, stay or appraisal and all rights of marshalling, the Collateral and any other security for the Obligations or otherwise on the part of the Borrowers (all said rights being also hereby waived and released by each Borrower to the fullest extent permitted by law), and may make payment on account thereof by using any claim then due and payable to Lender from any Borrower as a credit against the purchase price, and Lender may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Borrower therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof. Lender shall be free to carry out any such sale pursuant to such agreement, and no Borrower shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after Lender shall have entered into such an agreement, all Events of Default shall have been remedied and any obligations to Lender shall have been paid in full. As an alternative to exercising the power of sale herein conferred upon it, Lender may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. In any action hereunder, Lender shall be entitled to the appointment of a receiver without notice, to peaceably take possession of all or any portion of the Collateral and to exercise such powers as the Bankruptcy Court shall confer upon the receiver. Notwithstanding the foregoing, if an Event of Default shall occur and be continuing, Lender shall be entitled to apply, without notice to any Borrower, any cash or cash items constituting Collateral in its possession to payment of the Obligations.

(2) If an Event of Default shall occur and be continuing, Lender shall, in addition to exercising any and all rights and remedies afforded to them hereunder, have all the rights and remedies of a secured party under all applicable provisions of law, including but not limited to, the Code.

(3) Each Borrower agrees that notwithstanding anything to the contrary contained in this Agreement, such Borrower shall remain liable under each contract or other agreement giving rise to Accounts and General Intangibles and all other contracts or agreements constituting part of the Collateral and Lender shall not have any obligation or liability in respect thereof.

(4) After the occurrence and during the continuance of an Event of Default, upon Lender's request, but subject to the rights of any other secured party having rights senior to Lender, each Borrower shall deliver to Lender all original and other documents, evidencing and relating to the sale and delivery of Inventory or Accounts, including but not limited to, all original orders, invoices and shipping receipts.

Section 10.11 **Authority of Lender**. Lender shall have and be entitled to exercise all such powers hereunder as are specifically delegated to Lender by the terms hereof, together with such powers as are reasonably incidental thereto. Lender may execute any of its duties hereunder by or through its agents or employees and shall be entitled to retain counsel and to act in reliance upon the advice of such counsel concerning all matters pertaining to its duties hereunder.

Section 10.12 **Certain Waivers; Borrowers Not Discharged**. Each Borrower expressly and irrevocably waives (to the extent permitted by applicable law) presentment, demand of payment and protest of nonpayment in respect of its Obligations under this Agreement. The obligations and duties of each Borrower hereunder are irrevocable, absolute, and unconditional and shall not be discharged, impaired or otherwise affected by (a) the failure of Lender to assert any claim or demand or to enforce any right or remedy against any Borrower or any grantee under the provisions of this Agreement or any waiver, consent, extension, indulgence or other action or inaction in respect thereof, (b) any extension or renewal of any part of the Obligations, (c) any rescission, waiver, amendment or modification of any of the terms or provisions of any agreement related to this Agreement, (d) the release of any liens on or security interests in any part of the Collateral or the release, sale or exchange of or failure to foreclose against any security held by or for the benefit of Lender for payment or performance of the Obligations, (e) the bankruptcy, insolvency or reorganization of any Borrower or any grantee or any other Persons, (f) any change, restructuring or termination of the organization structure or existence of any Borrower or any grantee or any restructuring or refinancing of all or any portion of the Obligations, or (g) any other event that under law would discharge the obligations of a surety other than payment and satisfaction in full of all Obligations.

Section 10.13 **Transfer of Security Interest**. In connection with a transfer of the Loans permitted under this Agreement (including Section 11.24), Lender may transfer to any other Person all or any part of the liens and security interests granted hereby, and all, or any part of the Collateral which may be in Lender's possession. Upon such transfer, the transferee shall be vested with all the rights and powers of Lender hereunder with respect to such of the Collateral as is so transferred but, with respect to any of the Collateral not so transferred, Lender shall retain all of its rights and powers (whether given to it in this Agreement, or otherwise). In connection with a transfer of the Loans permitted under this Agreement (including Section 11.24), Lender may, at any time, assign its rights as the secured party hereunder to any Person, in Lender's discretion, and upon notice to the Borrowers, but without any requirement for consent or approval by or from any Borrower, and any such assignment shall be valid and binding upon each Borrower, as fully as if it had expressly approved the same.

Section 10.14 **Contractual Rights**. The security interests and other rights granted or reserved to Lender and its successors and assigns under this Agreement (the "**Contractual Rights**") and the other rights available to Lender under applicable law by reason of the existence of this Agreement and the attachment and perfection of the security interests created under this Agreement (the "**Statutory Rights**") are for the benefit of the Lender. All recoveries attributable to enforcement of Contractual Rights or Statutory Rights, or both, shall (except as otherwise expressly set forth herein or in the other Purchase Documents) be for the benefit of the Lender as provided in the Agreement.

Section 10.15 **Borrowers' Obligations**. The provisions of this Article 10 are for the purpose of defining the relative rights of the Lender with respect to the Collateral and the exercise of Contractual Rights and Statutory Rights. Nothing herein shall impair the obligations of Borrower, which are absolute and unconditional, to pay and perform the Obligations as and when due. No provision of this Agreement shall be construed to prevent Lender from exercising remedies that may otherwise be available to it.

Section 10.16 **Continuing Lien; Termination**. It is the intent of the parties hereto that (a) this Agreement shall constitute a continuing agreement as to any and all future, as well as existing transactions, between each Borrower and Lender under or in connection with the Loans, and (b) the security interest provided for herein shall attach to after-acquired as well as existing Collateral. Upon payment in cash and satisfaction in full of the Obligations and termination of all commitments relating thereto, Lender shall reassign, redeliver and release (or cause to be so reassigned, redelivered and released), without recourse upon or warranty by Lender, and at the sole expense of each Borrower, to such Borrower, against receipt therefor, such of the Collateral (if any) as shall not have been sold or otherwise applied by Lender pursuant to the terms hereof and not theretofore reassigned, redelivered and released to any Borrower, together with appropriate instruments of reassignment and release.

Section 10.17 **Adequate Protection**. The Lender has been granted adequate protection in accordance with the DIP Orders with respect to any Prepetition Obligations to the extent of any diminution in the value of the Collateral as of the Petition Date, including but not limited to any diminution in value resulting from (i) the use, sale or lease of Collateral pursuant to Bankruptcy Code section 363(c) or (ii) the imposition of the Automatic Stay, in the form of Adequate Protection Liens.

Section 10.18 **Validity and Priority of Security Interest; Administrative Priority**.

(1) The provisions of this Agreement and the other Loan Documents create Liens upon the Collateral in favor of the Lender, which shall be deemed valid and perfected as of the Petition Date by entry of the DIP Orders with respect to the Borrowers and which shall constitute continuing Liens on the Collateral having priority over all other Liens on the Collateral (other than the Carve-Out and the Prepetition Permitted Liens), securing all the Obligations. The Lender shall not be required to file or record (but shall have the option and authority to file or record) any financing statements, mortgages, notices of Lien or similar instruments, in any jurisdiction or filing office or to take any other action in order to validate, perfect or establish the priority of the Liens and security interest granted by or pursuant to this Agreement, the DIP Orders or any other Loan Document.

(2) Pursuant to section 364(c)(1) of the Bankruptcy Code, subject to the Carve-Out and subject to the scheme of priority set forth in the DIP Orders, the Obligations of the Borrowers shall at all times constitute allowed administrative expenses against each of the Borrowers in the Cases (without the need to file any proof of claim or request for payment of administrative expense), with priority over any and all other administrative expenses, adequate protection claims, diminution claims (including all Adequate Protection Superpriority Claims) and all other claims against the Borrowers, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expense claims arising under sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546, 726, 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, and subject to section 1129(a)(9)(A) of the Bankruptcy Code.

ARTICLE 11
MISCELLANEOUS

Section 11.1 **Notices**. Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by electronic mail (email). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth below.

If to Lender:

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
magnus.rayos@pon.com

with a copy to:

Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, New York 10178-0060
Attention: Kristen V. Campana, Sameer V. Mohan and Jennifer Feldsher
Email: kristen.campana@morganlewis.com
sameer.mohan@morganlewis.com
jennifer.feldsher@morganlewis.com

If to the Borrowers: c/o Recombinetics, Inc.
3388 Mike Collins Drive, #1,
Eagan, MN 55121
Attention: Rocco Morelli
Email: rocco.morelli@recombinetics.com

with a copy to: Faegre Drinker Biddle & Reath LLP
222 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Attention: Ian J. Bambrick, Patrick A. Jackson, and Sarah Silveira E. Silveira
Email: ian.bambrick@faegredrinker.com
patrick.jackson@faegredrinker.com
sarah.silveira@faegredrinker.com

Any communication so addressed and mailed shall be deemed to be given on the earliest of (a) when actually delivered, or (b) on the first (1st) Business Day after deposit with an overnight air courier service, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by Lender or Borrower, as the case may be. If given by email, a notice shall be deemed given and received when the email is transmitted to the party's email address specified above. Either party may designate a change of address by promptly giving prior written notice of such change of address.

Section 11.2 **Amendments and Waivers**. No amendment or waiver of any provision of the Loan Documents shall be effective unless in writing and signed by the party against whom enforcement is sought. No course of dealing on the part of Lender, its officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any right, power or privilege of Lender under any of the Loan Documents, shall operate as a waiver thereof.

Section 11.3 **Limitation on Interest**. It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements among the Borrowers and Lender with respect to the Loans are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Lender or charged by Lender for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. The terms and provisions of this Section 11.3 shall control and supersede every other provision of the Loan Documents. The Loan Documents are contracts made under and shall be construed in accordance with and governed by the laws of the State, except that if at any time the laws of the United States of America permit Lender to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which Lender may contract for, take, reserve, charge or receive under the Loan Documents.

Section 11.4 **Invalid Provisions**. If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never composed a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 11.5 **<u>Expenses; Attorneys' Fees; Indemnification</u>**.

(1) The Borrowers will pay, all documented out-of-pocket fees, costs and expenses incurred by or on behalf of Lender, including without limitation, reasonable and documented out-of-pocket fees, costs, client charges and expenses of counsel arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other Loan Documents, including, without limitation, the perfection, termination, and the continuation of the perfection of any security interest in the Collateral, (b) any requested amendments, waivers or consents to this Agreement or the other Loan Documents whether or not such documents become effective or are given, (c) the preservation and protection of Lender's rights under this Agreement or the other Loan Documents, (d) the defense of any claim or action asserted or brought against Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the Lender's claims against any Borrower, or any and all matters in connection therewith, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement or any other Loan Document, (f) the filing of any petition, complaint, answer, motion or other pleading by Lender, or the taking of any action in respect of the Collateral or other security, in connection with this Agreement or any other Loan Document, (g) the protection, collection, lease, sale, taking possession of or liquidation of, any Collateral or other security in connection with this Agreement or any other Loan Document, (h) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement or any other Loan Document, (i) any attempt to collect from any Borrower, (j) the receipt by Lender of any advice from professionals with respect to any of the foregoing and (k) all amounts incurred following the occurrence and during the continuance of an Event of Default of all amounts required to discharge taxes, Liens, security interests or such other encumbrances as may attach to the Collateral; pay for required insurance on the Collateral pay for the maintenance, appraisal or reappraisal, and preservation of the Collateral, as determined by Lender to be necessary. Without limitation of the foregoing or any other provision of any Loan Document, if the Borrowers fail to perform any covenant or agreement contained herein or in any other Loan Document, Lender may itself perform or cause performance of such covenant or agreement, and the expenses of Lender incurred in connection therewith shall be reimbursed on demand by the Borrowers. The obligations of the Borrowers under this <u>Section 11.5</u> shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

(2) Each Borrower shall indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys, who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by such Borrower arising out of, in connection with, or as a result of: (i) the execution or delivery of this Agreement, the Prepetition Rescue Financing Agreement, any other Loan Document, any other Prepetition Loan Document or any document contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (including (a) the handling of any collateral of a Borrower as herein or therein provided, (b) Prior Lender's or the Lender's relying on any instructions of a Borrower, or (c) any other action taken by Lender hereunder or under the other Loan Documents or any other action taken by Prior Lender under the Prepetition Rescue Financing Agreement or under the other Prepetition Loan Documents); (ii) the Loans, the Prepetition Loan or the use or proposed use of the proceeds thereof; or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Borrower or any subsidiary thereof, and regardless of whether any Indemnitee is a party thereto.

(3) Each Borrower agrees to save harmless and indemnify Lender from and against any claim, demand, action, suit, proceeding or liability for any fee or commission, including any costs and

expenses (including attorneys' fees) incurred by Lender in connection with any broker's or finder's or commission in connection with this Agreement or the transactions contemplated hereby.

Section 11.6 **Conditions**. All conditions of the obligations of Lender hereunder, including the obligation to make a Loan, are imposed solely and exclusively for the benefit of Lender, its successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make a Loan in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Lender at any time in Lender's sole discretion.

Section 11.7 **Lender Not in Control; No Partnership**. None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Lender the right or power to exercise control over the affairs or management of the Borrowers, the power of Lender being limited to the rights to exercise the remedies referred to in the Loan Documents. The relationship between the Borrowers and Lender is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or other similar interest between Lender and the Borrowers, and the rights of Lender to receive interest, fees and other compensation for the credit made available by Lender to Borrowers shall be interpreted at all times to make Lender a creditor of the Borrowers. Lender and the Borrowers disclaim any intention to create any partnership, joint venture, agency or other similar interest between Lender and the Borrowers by virtue of this Agreement.

Section 11.8 **Time of the Essence**. Time is of the essence with respect to this Agreement.

Section 11.9 **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of Lender, Borrowers and their respective successors and assigns, provided that no Borrower shall, without the prior written consent of Lender, assign any rights, duties or obligations hereunder.

Section 11.10 **Renewal, Extension or Rearrangement**. All provisions of the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loans, including any notes or other documents issues in substitution for the existing Loan Documents.

Section 11.11 **Cumulative Rights**. Rights and remedies of Lender under the Loan Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

Section 11.12 **Singular and Plural**. Words used in this Agreement and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

Section 11.13 **Phrases**. When used in this Agreement and the other Loan Documents, the phrase "including" shall mean "including, but not limited to," the phrase "satisfactory to Lender" shall mean "in form and substance satisfactory to Lender in all respects," the phrase "with Lender's consent" or "with Lender's approval" shall mean such consent or approval at Lender's reasonable discretion, and the phrase "acceptable to Lender" shall mean "acceptable to Lender at Lender's reasonable discretion."

Section 11.14 **Exhibits and Schedules**. The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

Section 11.15 **Titles of Articles, Sections and Subsections**. All titles or headings to articles, sections, subsections or other divisions of this Agreement and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 11.16 [Reserved].

Section 11.17 **Survival**. All of the representations, warranties, covenants, and indemnities hereunder, and under the indemnification provisions of the other Loan Documents shall survive the repayment in full of the Loan and the release of the Liens evidencing or securing the Loans.

Section 11.18 **Waiver of Jury Trial; Venue**. IN THE EVENT THAT THE BANKRUPTCY COURT DOES NOT HAVE OR REFUSES TO EXERCISE JURISDICTION WITH RESPECT THERETO, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOANS (INCLUDING ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER THIS AGREEMENT. LENDER IS HEREBY AUTHORIZED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE BORROWERS AND LENDER, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF SUCH WAIVER OF RIGHT TO TRIAL BY JURY. EACH BORROWER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND/OR THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. EACH BORROWER AGREES THAT THE NEW YORK COUNTY DISTRICT COURT SHALL HAVE EXCLUSIVE JURISDICTION WITH REGARD TO ALL MATTERS RELATING HERETO AND EACH BORROWER SUBMITS ITSELF TO SUCH VENUE, SUBJECT TO ANY LAWFUL REQUIREMENT TO SUBMIT TO OTHER JURISDICTIONS SO REQUIRED WITH RESPECT TO ENFORCEMENT OF COLLATERAL.

Section 11.19 **Waiver of Punitive or Consequential Damages**. In no event shall Lender be liable to the Borrowers for any punitive, exemplary or consequential damages which may be alleged as a result of the Loans or the transactions contemplated hereby, including any breach or other default by Lender, and each Borrower, for itself and its affiliates, hereby waives all claims for consequential damages.

Section 11.20 **Sole Discretion**. Unless otherwise specifically provided in this Agreement, whenever the consent or approval of Lender is required under this Agreement, the decision as to whether or not to consent or approve shall be in the sole and exclusive discretion of Lender, and the decision of Lender shall be final and conclusive. Unless otherwise specifically provided in this Agreement, whenever the consent or approval of Lender is required under this Agreement, the decision as to whether or not to consent or approve shall be in the sole and exclusive discretion of Lender, and the decision of Lender shall be final and conclusive.

Section 11.21 **Governing Law**. Except to the extent governed by the Bankruptcy Code, the Loan Documents are being executed and delivered, and are intended to be performed, in the State, and the laws of the State and of the United States of America shall govern the rights and duties of the parties hereto and the validity, construction, enforcement and interpretation of the Loan Documents, except to the extent otherwise specified in any of the Loan Documents.

Section 11.22 **Entire Agreement**. This Agreement and the other Loan Documents embody the entire agreement and understanding among Lender and the Borrowers and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. If any conflict or inconsistency exists between this Agreement or any of the other Loan Documents, the terms of this Agreement shall control.

Section 11.23 **Levy; Attachment**. Neither Lender's obligation hereunder nor any monies, property or funds deposited or required to be deposited under this Agreement shall be subject or liable to attachment or levy by suit or action of any creditor of the Borrowers or of any agent, contractor, subcontractor or supplier of the Borrowers.

Section 11.24 **Successors and Assigns; Participations and Assignments**.

(1) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its respective rights or obligations hereunder without the prior written consent of Lender. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement or to the Borrowers or any Subsidiary thereof.

(2) Each Borrower agrees and consents that Lender may assign to one or more assignees (together with its successors and assigns, each an "**Assignee**") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) without any limitation whatsoever. Each Borrower hereby waives any and all notices of assignment by Lender or by any Assignee. Each Borrower also agrees that any Assignee will be considered the absolute owner of such Assignee's interest in the Commitments and the Loans at the time owing to it and will have all the rights and obligations granted to such Assignee. Each Borrower further waives all rights of offset or counterclaim that it may have now or hereafter against Lender or against any Assignee and unconditionally agrees that either Lender or such Assignee may enforce such Borrower's obligations under the Loan Documents irrespective of the failure or insolvency of any holder of any interest in the Commitments and the Loans at the time owing to it. Each Borrower further agrees that any Assignee may enforce its interests irrespective of any personal claims or defenses that such Borrower may have against Lender.

(3) Each Borrower agrees and consents to Lender's sale or transfer, whether now or hereafter, of one or more participation interests in this loan facility to one or more purchasers (together with its successors and assigns, each a "**Participant**"), whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information of knowledge Lender may have about the Borrowers or about any other matter relating to this loan, and each Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Each Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Each Borrower also agrees that any Participant

will be considered the absolute owner of such Participant's interest in the Commitments and the Loans at the time owing to it and will have all the rights granted to it under the participation agreement or agreements governing the sale of such Participant's interest. Each Borrower further waives all rights of offset or counterclaim that it may have now or hereafter against Lender or against any Participant and unconditionally agrees that either Lender or such Participant may enforce such Borrower's obligations under the Loan Documents irrespective of the failure or insolvency of any holder of any interest in the Commitments and the Loans at the time owing to it. Each Borrower further agrees that any Participant may enforce its interests irrespective of any personal claims or defenses that such Borrower may have against Lender.

Section 11.25 **USA Patriot Act Notification**. Lender hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act of 2001, 31, U.S.C. 5318, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of the Borrowers and other information that will allow Lender to identify the Borrowers in accordance therewith.

Section 11.26 **Right to Defend**. Lender shall have the right, but not the obligation, at each Borrower's expense, to commence, to appear in or to defend any action or proceeding purporting to affect the rights or duties of the parties hereunder and, in connection therewith, pay out of the funds of the Loans all necessary expenses, including fees of counsel satisfactory to Lender, except in a suit by the Borrowers against Lender, in which case the prevailing party shall be entitled to such fees and expenses as a part of any judgment obtained.

Section 11.27 **Incorporation of DIP Orders by Reference**. Each of the Borrowers and Lender agrees that any reference contained herein to (i) the Interim DIP Order shall include all terms, conditions, and provisions of such Interim DIP Order and that the Interim DIP Order is incorporated herein for all purposes, and (ii) the Final DIP Order shall include all terms, conditions, and provisions of such Final DIP Order and that the Final DIP Order is incorporated herein for all purposes. To the extent there is any inconsistency between the terms of this Agreement and the terms of the DIP Orders, the terms of the DIP Orders shall govern.

Section 11.28 **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

[*SIGNATURE PAGES TO FOLLOW*]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

RECOMBINETICS, INC.,
as a Borrower

By________________________
Name:
Title:

ACCELIGEN, INC.,
as a Borrower

By________________________
Name:
Title:

REGENEVIDA, INC.,
as a Borrower

By________________________
Name:
Title:

SURROGEN, INC.,
as a Borrower

By________________________
Name:
Title:

THERILLUME, INC.,
as a Borrower

By________________________
Name:
Title:

TOG TECHNOLOGIES GROUP, LLC, as the Lender

By_______________________
Name:
Title:

EXHIBIT C

Initial DIP Budget

Recombinetics, Inc.

DIP Budget

recombinetics™

Recombinetics, Inc.

DIP Budget

$'000s

Days Post-Filing	**0**	**7**	**14**	**21**	**28**	**35**	**42**	**49**	**49**	
Pre/Post	**Post**	**Post**	**Post**	**Post**	**Post**	**Post**	**Post**	**Post**	**Post**	
Week #	**0**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	
Week Ending	**11-8-24**	**11-15-24**	**11-22-24**	**11-29-24**	**12-6-24**	**12-13-24**	**12-20-24**	**12-27-24**	**1-3-25**	**Case**
Actual / Forecast	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Total**
Total Cash Receipts	**$ -**	**$ -**	**$ -**	**$ -**	**$ 18**	**$ -**	**$ -**	**$ -**	**$ 18**	**$ 36**
Operating Disbursements										
Payroll & Benefits	$ -	$ -	$ -	$ (114)	$ -	$ (131)	$ -	$ (114)	$ -	$ (359)
Rent & Utilities	-	-	-	-	(32)	-	-	-	-	(32)
Insurance	-	-	-	-	-	-	-	-	-	-
Professionals - Ordinary Course	-	-	-	-	(100)	-	-	-	-	(100)
Trade Disbursements	-	(123)	(53)	(33)	(50)	(50)	(50)	(30)	(30)	(416)
Total Operating Disbursements	**$ -**	**$ (123)**	**$ (53)**	**$ (147)**	**$ (182)**	**$ (181)**	**$ (50)**	**$ (144)**	**$ (30)**	**$ (907)**
Operating Cash Flow	**$ -**	**$ (123)**	**$ (53)**	**$ (147)**	**$ (164)**	**$ (181)**	**$ (50)**	**$ (144)**	**$ (12)**	**$ (871)**
Restructuring Disbursements										
Cure Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Professionals - Bankruptcy[a]	-	(228)	(138)	(138)	(158)	(63)	(63)	-	-	(785)
Winddown Costs	-	-	-	-	-	-	-	-	-	-
Other Restructuring Disbursements[b]	-	-	-	-	(75)	-	-	-	(75)	(150)
Total Restructuring Disbursements	**$ -**	**$ (228)**	**$ (138)**	**$ (138)**	**$ (233)**	**$ (63)**	**$ (63)**	**$ -**	**$ (75)**	**$ (935)**
Debt Service, Interest & Fees	-	-	-	-	-	-	-	-	-	-
Net Cash Flow (Before DIP)	**$ -**	**$ (350)**	**$ (190)**	**$ (284)**	**$ (396)**	**$ (244)**	**$ (112)**	**$ (144)**	**$ (87)**	**$ (1,806)**
Beginning Operating Cash Balance	**$ 62**	**$ 62**	**$ 938**	**$ 748**	**$ 464**	**$ 608**	**$ 365**	**$ 253**	**$ 109**	**$ 62**
Net Cash Flow (Before DIP)	-	(350)	(190)	(284)	(396)	(244)	(112)	(144)	(87)	(1,806)
DIP Facility Draw/(Paydown)	-	1,227	-	-	540	-	-	-	-	1,767
Transfer To/From Operating Cash	-	-	-	-	-	-	-	-	-	-
Funding Need	-	-	-	-	-	-	-	-	-	-
Ending Operating Cash Balance	**$ 62**	**$ 938**	**$ 748**	**$ 464**	**$ 608**	**$ 365**	**$ 253**	**$ 109**	**$ 22**	**$ 22**
Restricted Cash[c]										
Beginning Restricted Cash Balance	**$ 553**	**$ 553**	**$ 591**	**$ 581**	**$ 571**	**$ 608**	**$ 598**	**$ 588**	**$ 578**	**$ 553**
Funding / Reimbursement	-	48	-	-	48	-	-	-	48	144
Program Disbursements	-	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(82)
Transfer To/From Restricted Cash	-	-	-	-	-	-	-	-	-	-
Ending Restricted Cash Balance	**$ 553**	**$ 591**	**$ 581**	**$ 571**	**$ 608**	**$ 598**	**$ 588**	**$ 578**	**$ 616**	**$ 616**
Total Cash	**$ 615**	**$ 1,529**	**$ 1,329**	**$ 1,035**	**$ 1,217**	**$ 963**	**$ 841**	**$ 686**	**$ 638**	**$ 638**
DIP Roll forward[d]										
Pre-DIP Principal Beg. Balance	$ 1,648	$ 1,648	$ 1,648	$ 1,648	$ 1,648	$ 1,648	$ 1,648	$ 1,648	$ 1,648	
Pre-DIP Draw / (Paydown)	-	-	-	-	-	-	-	-	-	
Pre-DIP Principal Ending Balance	$ 1,648	$ 1,648	$ 1,648	$ 1,648	$ 1,648	$ 1,648	$ 1,648	$ 1,648	$ 1,648	
New- Money DIP Principal Beg. Balance	$ -	$ -	$ 1,227	$ 1,227	$ 1,227	$ 1,767	$ 1,767	$ 1,767	$ 1,767	
New-Money DIP Draw / (Paydown)[e]	-	1,227	-	-	540	-	-	-	-	
New- Money DIP Principal Ending Balance	$ -	$ 1,227	$ 1,227	$ 1,227	$ 1,767	$ 1,767	$ 1,767	$ 1,767	$ 1,767	
Total DIP Principal (excl. Interest & Fees)	**$ 1,648**	**$ 2,875**	**$ 2,875**	**$ 2,875**	**$ 3,415**	**$ 3,415**	**$ 3,415**	**$ 3,415**	**$ 3,415**	

Notes:

(a) Includes escrowed professional fees (Debtor Counsel, Debtor FA, and Claims Agent)

(b) Includes D&O tail ($225k), monthly Investment Banker fees ($150k), and SubChapter V Trustee fees ($75k)

(c) Restricted cash includes grant and investment funds from the Gates Foundation, held in segregated accounts to be used in accordance with the grant agreements

(d) DIP balance is principal only

(e) Assumes second DIP draw on or after the Final Order Entry (on or around 12/4) in accordance with milestones in the DIP Credit Agreement

EXHIBIT D

Fee Letter

Final DIP Motion Draft

TOG TECHNOLOGIES, LLC
2939 380th Street
Sioux Center, IA 51250

November [●], 2024

CONFIDENTIAL

RECOMBINETICS, INC.
ACCELIGEN, INC.
REGENEVIDA, INC.
SURROGEN, INC.
THERILLUME, INC.
ACCELIGEN DO BRASIL BIOTECHNOLOGICA E PESQUISA CIENTIFICA LTDA
c/o Recombinetics, Inc.
3388 Mike Collins Drive, #1
Eagan, MN 55121

Re: Fee Letter

Ladies and Gentlemen:

We refer to that certain Superpriority Debtor in Possession Loan and Security Agreement, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Agreement"), by and among TOG TECHNOLOGIES, LLC, a Delaware limited liability company (together with its successors and assigns, "Lender"), RECOMBINETICS, INC., a Delaware corporation ("Recombinetics"), 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 Recombinetics, Acceligen, Regenevida, and Surrogen, each, a "Borrower" and collectively, the "Borrowers"). Capitalized terms used but not otherwise defined herein shall have the same meanings as set forth in the Agreement.

In connection with the Agreement, the Borrowers hereby agree to pay the following fees:

1. Commitment Fee. To Lender, a non-refundable closing fee (the "Commitment Fee") in an amount equal to two percent (2.0%) of the Commitments on the Effective Date, which Commitment Fee shall be fully earned and due and payable in full on the Effective Date. Lender may net fund an amount equal to the Commitment Fee from the Loans.

2. Exit Fee. To Lender, when the Loans are prepaid, repaid or otherwise paid, in whole or in part, for any reason and at any time (whether by mandatory or voluntary prepayment by the Borrowers, by reason of the occurrence of an Event of Default (including without limitation as the result of an insolvency event), upon the maturity of any Loan, or otherwise), as compensation for the costs of Lender making funds available to the Borrowers under the Agreement, an exit fee ("Exit Fee") equal to two percent (2.0%) of the aggregate principal amount of the Loans. The Exit Fee shall be fully earned on the Effective Date and due and payable in an amount that is ratable with the amount of principal amounts of Loans prepaid, repaid or otherwise paid on such payment date.

Each Borrower expressly acknowledges and understands that notwithstanding any applicable law to the contrary, pursuant to the terms of this letter agreement, it has agreed that it has no right to repay the Loans without the payment of the Exit Fee and that it shall be liable for the payment of the Exit Fee for payment of the Loans on acceleration of the Loans in accordance with the terms of the Loan Documents. Furthermore, each Borrower expressly acknowledges and understands that Lender has agreed to disburse the Loans in reliance on these agreements of such Borrower and that Lender would not have agreed to disburse the Loans without such agreements of such Borrower.

All fees payable under this letter agreement constitute compensation for services rendered and do not constitute interest or a charge for the use of money. The Borrowers shall pay all amounts due and payable hereunder to the account of the Lender when due in lawful money of the United States of America and in immediately available funds. All payments hereunder shall be made by the Borrowers without set-off, counterclaim, deduction or other defense and shall not be subject to any rebate or reduction and shall not be refundable under any circumstance.

The Borrowers hereby acknowledge and agree that (i) each fee hereunder constitutes Obligations and is in addition to any other fees payable by the Borrowers under the Agreement or any other Loan Document and (ii) this letter agreement constitutes a "Loan Document" under the Agreement.

This letter agreement is the "Fee Letter" referred to in the Agreement, shall be construed under and governed by the law of the State of New York, and may be executed in any number of counterparts and by different parties on separate counterparts. Each of such counterparts shall be deemed to be an original, and all of such counterparts, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this letter agreement by facsimile or electronic mail shall be equally effective as delivery of a manually executed counterpart. This letter agreement may not be amended or otherwise modified unless the same shall be in writing and signed by the parties hereto. This letter agreement is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto. This Fee Letter, together with the other Loan Documents, sets forth the entire understanding of the parties hereto as to the matters covered hereby.

If this letter agreement becomes the subject of a dispute, each of the parties hereto hereby waives trial by jury. Each party hereto agrees that the provisions of the Agreement regarding confidentiality, jurisdiction and venue are incorporated herein by reference and shall apply, *mutatis mutandis*, to this letter agreement as if fully set forth herein.

[signature pages follow]

Very truly yours,

TOG TECHNOLOGIES, LLC,
as the Lender

By: __________________________
Name:
Title:

Accepted and agreed to
as of the date first above written:

RECOMBINETICS, INC.,
as a Borrower

By________________________
Name:
Title:

ACCELIGEN, INC.,
as a Borrower

By________________________
Name:
Title:

REGENEVIDA, INC.,
as a Borrower

By________________________
Name:
Title:

SURROGEN, INC.,
as a Borrower

By________________________
Name:
Title:

THERILLUME, INC.,
as a Borrower

By________________________
Name:
Title: