

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

In re:

HUMANIGEN, INC.,¹

Debtor.

Chapter 11

Case No. 24-10003 (BLS)

Re: Docket No. 10

**ORDER (I) APPROVING BID PROCEDURES IN CONNECTION
WITH THE POTENTIAL SALE OF SUBSTANTIALLY ALL OF THE
DEBTOR’S ASSETS, (II) SCHEDULING AN AUCTION AND A SALE HEARING,
(III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF,
(IV) AUTHORIZING THE DEBTOR TO ENTER INTO THE
STALKING HORSE AGREEMENT, (V) APPROVING PROCEDURES
FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS
AND LEASES, AND (VI) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of an order (this “**Order**”) (i) authorizing and approving the Bid Procedures attached hereto as Exhibit 1 (the “**Bid Procedures**”) in connection with the sale (the “**Sale**”) of substantially all of the Debtor’s assets (the “**Assets**”), (ii) scheduling an auction and hearing to consider the Sale of the Assets, (iii) approving the form and manner of notice thereof, (iv) authorizing, to the extent set forth herein, the Debtor to enter into the Stalking Horse Agreement (as defined below), (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale (collectively, the “**Contracts**”), and (vi) granting related relief, all as more fully set forth in the Motion; and upon

¹ The Debtor’s mailing address in this chapter 11 case is 533 Airport Boulevard, Suite 400, Burlingame, CA 94010 and the last four digits of the Debtor’s federal tax identification number are 7236.

² Capitalized terms used as defined terms herein but not otherwise defined shall have the meanings ascribed to them in the Motion or the Bid Procedures, as applicable. In the event there is a conflict between this Order and the Motion, this Order shall control and govern.

the First Day Declaration and the LoCascio Declaration; and this Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before this Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion, the First Day Declaration, the LoCascio Declaration, and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation thereon and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent 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.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

C. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtor has confirmed its consent, 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**”), to the entry of a final order by this Court in connection with the Motion, to the extent it is later determined this Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

D. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

E. The bases for the relief requested in the Motion are sections 105, 363, 365, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 2002-1, 6004-1, and 9013-1(m).

F. Notice of the Motion has been given to: (a) the U.S. Trustee; (b) counsel to the DIP Lender and Stalking Horse Bidder; (c) the holders of the twenty (20) largest unsecured claims against the Debtor; (d) all other parties who have expressed a written interest in the Assets; (e) the United States Attorney’s Office for the District of Delaware; (f) the Internal Revenue Service; (g) the Attorney General for the State of Delaware; (h) the Securities and Exchange Commission; (i) all parties known or reasonably believed to have asserted a lien or security interest in the Assets (for whom identifying information and addresses are available to the Debtor); (j) the Contract Counterparties; (k) the Department of Justice; (l) attorneys general in all states in which the Debtor operates; (m) all taxing authorities for jurisdictions to which the Debtor is subject; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002.

G. In the Motion and at the hearing on the relief set forth herein, the Debtor demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

H. The Debtor has articulated good and sufficient reasons for this Court to (i) approve the Bid Procedures, (ii) schedule the bid deadlines and the Auction and the Sale Hearing, (iii) approve the form and manner of notice of the Auction and Sale Hearing, (iv) approve

procedures for the assumption and assignment of the Contracts, including notice of the proposed cure amounts, (v) authorize the Debtor to enter into the Stalking Horse Agreement, in the exercise of its reasonable business judgment. The entry of this Order is in the best interests of the Debtor, its estate, creditors, and other parties in interest.

I. The Bid Procedures attached hereto as Exhibit 1 are reasonable, appropriate and represent the best method for maximizing value for the benefit of the Debtor, its estate, and its creditors. The Bid Procedures were negotiated at arm's length, in good faith, and without collusion. The Bid Procedures balance the Debtor's interests in emerging expeditiously from the Chapter 11 Case while preserving the opportunity to attract value-maximizing proposals beneficial to the Debtor, its estate, its creditors, and other parties in interest. The Bid Procedures comply with the requirements of Local Rule 6004-1(c).

J. The Debtor has demonstrated compelling and sound business justifications for approval of, and authorization to perform under, that certain Asset Purchase Agreement, a copy of which is attached as Exhibit A to the Motion (the "**Stalking Horse Agreement**") by and among the Debtor and the Stalking Horse Bidder. The Stalking Horse Agreement represents the highest or otherwise best offer the Debtor has received to date as a result of its efforts to market the Assets for sale.

K. The Debtor's performance of certain pre-closing obligations contained in the Stalking Horse Agreement is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest, and represents a reasonable exercise of the Debtor's sound business judgment.

L. The notice, substantially in the form attached hereto as Exhibit 2, provided by the Debtor regarding the Sale of the Assets by Auction and Sale Hearing (the "**Sale Notice**"), is reasonably calculated to provide interested parties with timely and proper notice of the proposed

Sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held), (ii) the Bid Procedures and certain dates and deadlines related thereto, (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing, (iv) reasonably specific identification of the assets for sale, (v) instructions for promptly obtaining a copy of the Stalking Horse Agreement, if any, (vi) a description of the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the sale proceeds, and (vii) notice of the proposed assumption and assignment of Contracts to the Successful Bidder (as defined in the Bid Procedures) and the right, procedures, and deadlines for objecting thereto. No other or further notice of the Sale shall be required.

M. The Motion, this Order, and the Assignment Procedures (as defined below) set forth herein are appropriate and reasonably calculated to provide counterparties to any Contracts to be assumed by the Debtor and assigned to the Successful Bidder with proper notice of the intended assumption and assignment of their Contracts, the procedures in connection therewith, and any cure amounts relating thereto.

N. Neither the filing of the Motion, entry of this Order, the solicitation of bids or the conducting of the Auction in accordance with the Bid Procedures nor any other actions taken by the Debtor in accordance therewith shall constitute a sale of the Assets, which sale will only take place, if at all, following the Sale Hearing.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. All objections, statements, and reservations of rights with respect to the relief requested in the Motion with respect to the Bid Procedures that have not been withdrawn, waived,

or settled, as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled and denied on the merits with prejudice.

I. The Bid Procedures

3. The Bid Procedures, attached hereto as Exhibit 1, are hereby approved in their entirety and fully incorporated into this Order. The Bid Procedures shall govern the submission, receipt, and analysis of all bids relating to the proposed Sale and any party desiring to submit a higher or better offer for the Assets must comply with the terms of the Bid Procedures and this Order. The Bid Procedures shall also govern the terms on which the Debtor will proceed with the Auction and/or Sale.

4. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bid Procedures), *provided that* the Committee's right to seek further relief from the Court on an expedited basis regarding these dates is preserved:³

(All times are prevailing Eastern Time)

January 24, 2024: Debtor to send Cure and Possible Assumption and Assignment Notices to All Contract Counterparties

February 5, 2024 at 4:00 p.m.: Cure or Assignment Objection Deadline

February 12, 2024 at 4:00 p.m.: Deadline to submit Bid to be considered for the Auction

February 13, 2024 at 4:00 p.m.: Sale Objection Deadline

February 13, 2024 at 10:00 a.m.: Auction (if necessary)

As soon as practicable after the conclusion of the Auction: Debtor to file notice of Successful Bidder

At the Sale Hearing: Post-Auction Objection Deadline

³ All times are stated in prevailing Eastern Time, unless otherwise indicated.

February 14, 2024 at 1:30 p.m.: Sale Hearing

February 20, 2024: Sale Closing

II. Entry into Stalking Horse Agreement

5. Subject to Court approval at the Sale Hearing, the Debtor is authorized to enter into the Stalking Horse Agreement, and all parties' rights to object to any Sale or the terms thereof, including under the Stalking Horse Agreement, are fully preserved.

6. The Debtor is authorized to perform all of its respective pre-closing obligations under the Stalking Horse Agreement; provided that for the avoidance of doubt, approval and consummation of the transactions contemplated by the Stalking Horse Agreement shall be subject to the terms and conditions herein and the entry of an order approving the Sale of the Assets and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse Agreement.

III. The Auction

7. As further described in the Bid Procedures, if a Qualifying Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Debtor will conduct the Auction at **10:00 a.m. (prevailing Eastern Time) on February 13, 2024**, at the offices of the Debtor's proposed counsel, Potter Anderson & Corroon LLP, 1313 N. Market Street, Wilmington, Delaware 19801, or such later time on such day or other place as the Debtor shall notify all Qualifying Bidders who have submitted Qualifying Bids, if a Qualifying Bid is timely received. The Debtor is authorized, subject to the terms of this Order and the Bid Procedures, to take actions reasonably necessary to conduct and implement the Auction.

8. If the Debtor does not receive a Qualifying Bid (other than the Stalking Horse Bid):
(a) the Debtor may cancel the Auction; (b) the Stalking Horse Agreement may be deemed by the

Debtor to be the Successful Bid for the Assets; and (c) the Debtor may seek approval of the Stalking Horse Agreement as the Successful Bid at the Sale Hearing.

9. Only Qualifying Bidders will be entitled to make any Bids at the Auction.

10. The Debtor and its professionals shall direct and preside over the Auction and the Auction shall be transcribed or videotaped.

11. Each Qualifying Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (b) has reviewed, understands, and accepts the Bid Procedures, and (c) has consented to the core jurisdiction of this Court and to the entry of a final order by this Court on any matter related to this Order, the Sale, or the Auction if it is determined that this Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

12. To the fullest extent permissible under Bankruptcy Code section 363(k), the Stalking Horse Bidder may credit bid (a “**Credit Bid**”), as a Qualifying Bid or subsequent Bid, in its sole and absolute discretion, any portion and up to the entire amount of obligations owing in connection with the DIP Loans (as defined in the DIP Order), in the full amount of such obligations outstanding as of the date of the Auction on the Assets constituting DIP Collateral (as defined in the DIP Order).

13. In the event of a competing Qualifying Bid, all Qualifying Bidders will be entitled, but not obligated, to submit Overbids.

14. The Debtor may (i) determine, in consultation with the Consultation Parties, which Qualifying Bid or combination of Qualifying Bids is the highest or otherwise best offer, (ii) reject, after notice to and consultation with the Consultation Parties, at any time before the entry of the Sale Order any Bid that, in the reasonable discretion of the Debtor, is (a) inadequate or insufficient,

(b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bid Procedures, or (c) contrary to the best interest of the Debtor, its estate, its creditors, interest holders, or other parties in interest, and (iii) at or before the conclusion of the Auction may impose such other terms and conditions upon Qualifying Bidders as the Debtor reasonably determines, in consultation with the Consultation Parties, to be in the best interest of the Debtor's estate.

15. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fee, topping or termination fee, or other similar fee or payment, and, by submitting a Bid, such person or entity is deemed to have waived its right to request or file with this Court any request for expense reimbursement or any other fee of any nature in connection with the Auction and the Sale, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

IV. Assumption and Assignment Notices & Procedures

16. The procedures set forth below regarding the assumption and assignment of the executory contracts proposed to be assumed by the Debtor pursuant to Bankruptcy Code section 365(b) and assigned to the Stalking Horse Bidder (or other Successful Bidder, if any) pursuant to Bankruptcy Code section 365(f) in connection with the Sale (the “**Assignment Procedures**”) are hereby approved to the extent set forth herein. These Assignment Procedures shall govern the assumption and assignment of all of the Contracts to be assumed and assigned in connection with the Sale, subject to the payments necessary to cure any defaults arising under any such Contracts.

17. On or prior to **January 24, 2024**, the Debtor shall serve via overnight delivery on all non-Debtor counterparties (each a “**Contract Counterparty**” and, collectively, the “**Contract Counterparties**”) to any Contract that may be assumed by the Debtor and assigned to the Stalking Horse Bidder or other Successful Bidder after the results of the Auction, which notice shall be

substantially in the form attached hereto as Exhibit 3 (a “**Cure and Possible Assumption and Assignment Notice**”). The Cure and Possible Assumption and Assignment Notice shall inform each recipient of the timing and procedures relating to such assumption and assignment, and, to the extent applicable, (i) the title of the executory contract or unexpired lease, as applicable, (ii) the name of the counterparty to the executory contract or unexpired lease, as applicable, (iii) the Debtor’s good faith estimate of the cure amount (if any) required in connection with the executory contract or unexpired lease, as applicable, (iv) the identity of the Successful Bidder (as assignee, if applicable), and (v) the Contract Objection Deadline (as defined below). The presence of a Contract on the Cure and Possible Assumption and Assignment Notice does not constitute an admission that such Contract is an executory contract or unexpired lease, and the presence of a Contract on any notice shall not prevent the Debtor from subsequently withdrawing such request for assumption or rejecting such Contract any time before such Contract is actually assumed and assigned pursuant to the Sale Order.

18. Although the Debtor intends to make a good faith effort to identify all Contracts that may be assumed and assigned in connection with a Sale, the Debtor may discover certain executory contracts and unexpired leases inadvertently omitted from the list of Contracts, or Successful Bidders may identify other executory contracts and/or unexpired leases that they desire to assume and assign in connection with the Sale. Accordingly, the Debtor reserves the right, but only in accordance with the Stalking Horse Agreement, or as otherwise agreed to by the Debtor and the Successful Bidder, at any time before the closing of a Sale, to (i) supplement the list of Contracts with previously omitted executory contracts, (ii) remove Contracts from the list of executory contracts and unexpired leases ultimately selected as Contracts that a Successful Bidder proposes to be assumed and assigned to it in connection with a Sale, and/or (iii) modify the

previously stated cure amount associated with any Contract. In the event the Debtor exercises any of the reserved rights, the Debtor will promptly serve a supplemental notice of contract assumption and assignment (a “**Supplemental Assumption Notice**”) on each of the counterparties to such Contracts and their counsel of record, if any; *provided, however*, the Debtor may not add an executory contract to the list of Contracts that has been previously rejected by the Debtor by order of the Court. Each Supplemental Assumption Notice will include the same information with respect to listed Contracts as was included in the Cure and Possible Assumption and Assignment Notice.

19. Objections, if any, to the cure amount set forth on the Cure and Possible Assumption and Assignment Notice, the possible assignment of its executory contract or unexpired lease, or the provision of adequate assurance of future performance by the Stalking Horse Bidder (each, a “**Contract Objection**”) must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, and (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Bankruptcy Court and served on the following parties so as to be actually received on or before **February 5, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the “**Contract Objection Deadline**”): (a) proposed counsel for the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com)); (b) counsel to the DIP Lender and Stalking Horse Bidder, Pashman Stein Walder Hayden, P.C., 1007 North Orange Street, 4th Fl., #183, Wilmington, Delaware 19801 (Attn: Joseph C. Barsalona II (jbarsalona@pashmanstein.com) and Henry Jaffe

(hjaffe@pashmanstein.com)); (c) proposed counsel for the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com)) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (Don.Detweiler@wbd-us.com)); and (d) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attention: Hannah McCollum (Hannah.McCollum@usdoj.gov)).

20. If a Contract Counterparty does not timely file and serve a Contract Objection, that party will be forever barred from objecting to (i) the Debtor's proposed cure amount, (ii) the assumption and assignment of that party's executory contract or unexpired lease (including the adequate assurance of future performance by the deadline set forth below), and (iii) the relief requested in the Motion (to the extent such relief relates to any proposed cure amount or the assumption and assignment of any executory contract or unexpired lease). Such party shall be forever barred and estopped from objecting to the cure amount, the assumption and assignment of that party's executory contract or unexpired lease (including the adequate assurance of future performance), the relief requested in the Motion (to the extent such relief relates to any proposed cure amount or the assumption and assignment of any executory contract or unexpired lease), whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Stalking Horse Bidder or the Successful Bidder, as applicable, for purposes of Bankruptcy Code section 365(c)(1) and/or 365(f)(1) and from asserting any additional cure or other amounts against the Debtor and the Stalking Horse Bidder or Successful Bidder, as applicable, with respect to such party's executory contract or unexpired lease.

21. Where a Contract Counterparty to an Assigned Contract files a timely Contract Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or objecting to the possible assignment of that Contract Counterparty's executory contract or unexpired lease, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtor's ability to assign the executory contract or unexpired lease to the Successful Bidder will be determined at the Sale Hearing or such later date that the Debtor and Successful Bidder shall determine in their discretion and upon notice to the objecting Contract Counterparty.

22. The payment of the applicable cure amount by the Debtor or Stalking Horse Bidder (or other Successful Bidder), as applicable, shall (i) effect a cure of all defaults existing thereunder and (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default.

23. Objections (each, an "**Post-Auction Objection**") to (i) the conduct at the Auction (if held), (ii) the sale to the Successful Bidder if the Successful Bidder is not the Stalking Horse Bidder, or (iii) solely with respect to the non-Debtor Counterparties to the Contracts, to the specific identity of and adequate assurance of future performance provided by the Successful Bidder (only if it is not the Stalking Horse Bidder) must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the legal and factual bases thereof, (d) be filed no later than **February 14, 2024 at the Sale Hearing** (the "**Post-Auction Objection Deadline**"), and (e) be served on: (i) proposed counsel for the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com)); (ii) counsel to the DIP Lender and Stalking Horse Bidder, Pashman Stein Walder Hayden, P.C.,

1007 North Orange Street, 4th Fl., #183, Wilmington, Delaware 19801 (Attn: Joseph C. Barsalona II (jbarsalona@pashmanstein.com) and Henry Jaffe (hjaffe@pashmanstein.com)); (iii) proposed counsel for the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com)) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (Don.Detweiler@wbd-us.com)); and (iv) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attention: Hannah McCollum (Hannah.McCollum@usdoj.gov)). For the avoidance of doubt, any objections to the possible assumption or assignment of executory contracts or unexpired leases to the Stalking Horse Bidder must be made by the Contract Objection Deadline.

V. Notice of the Sale Process

24. The Sale Notice and the Cure and Possible Assumption and Assignment Notice, in substantially the forms as annexed to this Order as Exhibit 2 and Exhibit 3, respectively, are hereby approved.

25. Within two (2) business days after the entry of this Order, the Debtor (or its agent) shall serve the Sale Notice by first-class mail upon: (a) the U.S. Trustee; (b) counsel to the DIP Lender and Stalking Horse Bidder; (c) proposed counsel for the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com)) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (Don.Detweiler@wbd-us.com)); (d) all other parties who have expressed a written interest in the

Assets; (e) the United States Attorney’s Office for the District of Delaware; (f) the Internal Revenue Service; (g) the Attorney General for the State of Delaware; (h) the Securities and Exchange Commission; (i) all parties known or reasonably believed to have asserted a lien or security interest in the Assets (for whom identifying information and addresses are available to the Debtor); (j) the Contract Counterparties; (k) the Department of Justice; (l) attorneys general in all states in which the Debtor operates; (m) all taxing authorities for jurisdictions to which the Debtor is subject; (n) all of the Debtor’s known creditors (for whom identifying information and addresses are available to the Debtor); and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002.

26. As soon as practicable thereafter, but in any event no later than seven (7) business days after entry of this Order, the Debtor may publish the Sale Notice, with such modifications as may be appropriate for purposes of publication, once in the National Edition of USA Today.

27. As soon as practicable after the entry of this Order, but in no event later than two (2) business days after entry of this Order, the Debtor shall post the Sale Notice and the Bid Procedures on the website maintained by the Debtor’s claims and noticing agent, Epiq Corporate Restructuring, LLC (“**Epiq**”), located at <https://dm.epiq11.com/humanigen>.

28. Such publication notice as set forth herein shall be deemed sufficient and proper notice of the Auction, Sale Hearing, and Sale to any other interested parties whose identities are unknown to the Debtor.

29. Service of the Sale Notice as set forth herein constitutes good and sufficient notice of the Auction and the Sale Hearing. No other or further notice is required.

VI. The Sale Hearing

30. The Sale Hearing will be conducted on **February 14, 2024 at 1:30 p.m. (prevailing Eastern Time)**. The Debtor will seek entry of an order of the Court at the Sale Hearing

approving and authorizing the sale of the Assets to the Successful Bidder. Upon entry of this Order, the Debtor is authorized to perform any obligation intended to be performed prior to the Sale Hearing or entry of the Sale Order with respect thereto. The Sale Hearing may be adjourned from time to time without further notice other than such announcement being made in open court or a notice of adjournment filed on the Court's docket.

VII. Objections to the Sale

31. Objections, if any, to the relief requested in the Motion relating to the Sale (each, a "**Sale Objection**") must: (i) be in writing, (ii) comply with the Bankruptcy Rules and the Local Rules, (iii) be filed with the Court, and (iv) be served so it is actually received no later than **February 13, 2024 at 4:00 p.m. (prevailing Eastern Time)**, by (a) proposed counsel for the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com)); (b) counsel to the DIP Lender and Stalking Horse Bidder, Pashman Stein Walder Hayden, P.C., 1007 North Orange Street, 4th Fl., #183, Wilmington, Delaware 19801 (Attn: Joseph C. Barsalona II (jbarsalona@pashmanstein.com) and Henry Jaffe (hjaffe@pashmanstein.com)); (c) proposed counsel for the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com)) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (Don.Detweiler@wbd-us.com)); and (d) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attention: Hannah McCollum (Hannah.McCollum@usdoj.gov)).

32. A party's failure to timely file (i) Contract Objection, (ii) a Sale Objection, or (iii) a Post-Auction Objection in accordance with this Order shall forever bar the assertion, at the applicable Sale Hearing or otherwise, of any objection to the relief requested in the Motion, or to the consummation of the Sale and the performance of the related transactions, including the transfer of the Assets to the applicable Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to Bankruptcy Code section 363(f), and shall be deemed to be a "consent" for purposes of Bankruptcy Code section 363(f).

VIII. Other Relief Granted

33. The Expense Reimbursement is denied without prejudice to the Stalking Horse Bidder's right to seek renewal of such request at the Sale Hearing.

34. Nothing in this Order, the Stalking Horse Agreement, or the Motion shall be deemed to or constitute the assumption or assignment of an executory contract or unexpired lease.

35. The requirements of Bankruptcy Rules 6004(h) and 6006(d) are waived.

36. The Debtor is hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

37. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

38. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, and the Debtor may, in its discretion and without further delay, take any action and perform any act authorized under this Order.

39. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: January 25th, 2024
Wilmington, Delaware



BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1 to Bid Procedures Order

Bid Procedures

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

In re:

HUMANIGEN, INC.,¹

Debtor.

Chapter 11

Case No. 24-10003 (BLS)

BID PROCEDURES

On January 3, 2024 (the “**Petition Date**”), the above captioned debtor and debtor in possession (the “**Debtor**”), filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtor is operating its business and managing its properties as debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

On January __, 2024, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered an order [Docket No. __] (the “**Bid Procedures Order**”)², which, among other things, authorized the Debtors to solicit bids and approved these procedures (collectively, the “**Bid Procedures**”) to be employed by the Debtor in connection with a sale of substantially all of its assets (collectively, the “**Assets**”), or components thereof, including but not limited to the Debtor’s inventory remaining at the closing of such sale, real property, plants, equipment, leases of nonresidential real property, other personal property, and intellectual property. Any such sale shall be referred to as a “**Transaction**”.

A stalking horse bid has been submitted for substantially all the Debtor’s Assets by Taran Therapeutics Inc. (the “**Stalking Horse Bidder**” and its bid, the “**Stalking Horse Bid**”). The Stalking Horse Bidder has executed an agreement (the “**Stalking Horse Agreement**”) with the Debtor for the Assets. The Stalking Horse Bid is subject to higher or better offers submitted in accordance with the terms and conditions of these Bid Procedures. These Bid Procedures describe, among other things: (i) the procedures for interested bidders to submit bids for the Assets; (ii) the manner in which bidders and bids become Qualifying Bidders and Qualifying Bids (each as defined herein); (iii) the negotiation of bids received; (iv) the conduct of an auction (the “**Auction**”), if one is to be held; and (v) the ultimate selection of the Successful Bidder(s) (as defined herein) and Court approval thereof.

ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT THE DEBTOR’S INVESTMENT BANKER, SC&H GROUP, INC.; MATT LOCASCIO (mlocascio@schgroup.com).

¹ The Debtor’s mailing address in this chapter 11 case is 533 Airport Boulevard, Suite 400, Burlingame, CA 94010 and the last four digits of the Debtor’s federal tax identification number are 7236.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bid Procedures Order or the Motion requesting the relief granted therein, as applicable.

SUMMARY OF IMPORTANT DATES

(All times are prevailing Eastern Time)

January 24, 2024: Debtor to send Cure and Possible Assumption and Assignment Notices to All Contract Counterparties

February 5, 2024 at 4:00 p.m.: Cure or Assignment Objection Deadline

February 12, 2024 at 4:00 p.m.: Deadline to submit Bid to be considered for the Auction

February 13, 2024 at 4:00 p.m.: Sale Objection Deadline

February 13, 2024 at 10:00 a.m.: Auction (if necessary)

As soon as practicable after the conclusion of the Auction: Debtor to file notice of Successful Bidder

At the Sale Hearing: Post-Auction Objection Deadline

February 14, 2024 at 1:30 p.m.: Sale Hearing

February 20, 2024: Sale Closing

The Committee shall retain the right to seek an extension of any of the above dates or deadlines from the Court on an expedited basis.

I. Assets to be Sold

The Debtor is offering for sale all of the Assets. Potential Bidders (as defined below) may bid on all or any number or combination of the Assets.

II. Participation Requirements

Any person or entity that wishes to participate in the bidding process for the Assets (each, a “**Potential Bidder**”) must first become a “**Qualifying Bidder**.” To become a Qualifying Bidder (and thus be able to conduct due diligence and gain access to the Debtor’s confidential electronic data room concerning the Assets (the “**Data Room**”)), a Potential Bidder must submit to the Debtor and its advisors:

- a. documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated Transaction;
- b. an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor, which by its terms will inure to the benefit of the Successful Bidder(s);

- c. a statement and other factual support demonstrating to the Debtor's reasonable satisfaction that the interested party has a bona fide interest in consummating a Transaction; and
- d. sufficient information, as reasonably determined by the Debtor, to allow the Debtor to determine that the interested party (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other authorizations to close a Transaction, including, but not limited to, current audited financial statements of the interested party (or such other form of financial disclosure acceptable to the Debtor in its discretion) and (ii) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtor and assigned to such bidder, pursuant to Bankruptcy Code section 365, in connection with a Transaction.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtor, each of the Consultation Parties (as defined below), or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate its contemplated Transaction.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bid Procedures: (i) the Stalking Horse Bidder shall be considered a Qualifying Bidder, and the Stalking Horse Agreement shall be considered a Qualifying Bid (as defined below); and (ii) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtor may, in consultation with the Consultation Parties, consider a combination of bids for the Assets.

III. Bankruptcy Court Jurisdiction

Any Potential Bidders and Qualifying Bidders shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating to the Bid Procedures, the respective Transaction proposed by each such party, the Auction (as defined below), and the construction and enforcement of the contemplated Transaction documents of such parties; (b) bring any such action or proceeding in the Court; and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

IV. Form of Agreement

As set forth below, Potential Bidders intending to submit bids must include with their bids an asset purchase agreement (a "**Purchase Agreement**"). The Purchase Agreement shall be in the form of the Stalking Horse Agreement included in the Data Room and include a redline marked against the form Purchase Agreement.

V. Due Diligence

The Debtor will provide any Qualifying Bidder with reasonable access to the Data Room and any other additional information that the Debtor believes to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: SC&H Group, Inc. (together with its subsidiaries and affiliates, “SC&H”), Matt LoCascio (mlocascio@schgroup.com).

The due diligence period shall extend through and including the Bid Deadline. The Debtor may, but shall not be obligated to, in its reasonable discretion in consultation with the Consultation Parties, furnish any due diligence information after the Bid Deadline.

The Debtor reserves the right, in its reasonable discretion in consultation with the Consultation Parties, to withhold or limit access to any due diligence information that the Debtor determines is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder.

VI. Bid Requirements

Other than in the case of the Stalking Horse Bid, to be deemed a “**Qualifying Bid**,” a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements, as determined by the Debtor in consultation with the Consultation Parties (each, a “**Bid Requirement**”):

- a. be in writing;
- b. fully disclose the identity of the Qualifying Bidder (and any other party participating in the bid) and provide the contact information of the specific person(s) whom the Debtor or its advisors should contact in the event that the Debtor has any questions or wish to discuss the bid submitted by the Qualifying Bidder;
- c. set forth the purchase price to be paid by such Qualifying Bidder;
- d. if a bid includes a credit bid under Bankruptcy Code section 363(k), other than a credit bid by the Stalking Horse Bidder, evidence of the amount of the claim, the Assets constituting the collateral securing the claim, and evidence of the grant, perfection, priority, and validity of the lien (the “**Secured Claim Documentation**”);³
- e. not propose payment in any form other than cash (except as otherwise expressly set forth in these Bid Procedures and the Bid Procedures Order);
- f. include an allocation of cash to each of the Assets proposed to be purchased;

³ Parties intending to submit a credit bid are encouraged to provide their Secured Claim Documentation to the Debtor’s counsel and the Committee’s counsel prior to the Bid Deadline to ensure that their Secured Claim Documentation is validated.

- g. state the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- h. specify the Assets that are included in the bid and state that such Qualifying Bidder offers to purchase the Assets, or a number or combination of the Assets, upon substantially the same terms as, or terms more favorable to the Debtor and its estate, than the terms set forth in the Stalking Horse Agreement, as applicable;
- i. state that such Qualifying Bidder's offer is formal, binding, and unconditional and is irrevocable until five (5) business days after the closing of the sale of the Assets;
- j. state that such Qualifying Bidder is financially capable of consummating the Transaction contemplated by the bid and provide written evidence in support thereof;
- k. contain such financial and other information to allow the Debtor to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to close the transactions contemplated by the proposal, including, without limitation, such financial and other information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under Bankruptcy Code section 365(f)(2)(B) and, if applicable, Bankruptcy Code section 365(b)(3), including the Qualifying Bidder's financial wherewithal to pay the full purchase price and otherwise operate the Acquired Business and willingness to perform under any contracts and leases that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtor to serve, within one (1) business day after such receipt, such information on any counterparties to any contracts or leases being assumed and assigned (or assumed) in connection with the Transaction that have requested, in writing, such information;
- l. contain evidence of the bidder's prior experience owning/operating comparable businesses or such other applicable experience;
- m. identify with particularity each and every executory contract and unexpired lease the assumption and assignment of which is a condition to close the contemplated transaction(s);
- n. specify whether the Qualifying Bidder intends to operate all or a portion of the Debtor's business as a going concern;
- o. include a commitment to close the Transaction by February 20, 2024;
- p. except as provided with respect to the Stalking Horse Bidder, not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement, or other similar fee or payment;

- q. the aggregate consideration proposed by the Qualifying Bidder must equal or exceed the sum of the amount of (A) the Purchase Price under the Stalking Horse Agreement and (B) \$150,000;
- r. not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval, or due diligence;
- s. contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bid Procedures and the proposed Transaction;
- t. confirm that the Qualifying Bidder acted in good faith with regard to the Seller, will continue to operate in good faith with respect to any bid on and/or proposed purchase of the Acquired Assets, has not violated any confidentiality agreement with the Seller, whether executed by the Qualifying Bidder or anyone working for or on behalf of the Qualifying Bidder;
- u. set forth (i) a statement or evidence that the Qualifying Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings and (ii) any regulatory and third-party approval required for the Qualifying Bidder to close the contemplated transactions, and the time period within which the Qualifying Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Qualifying Bidder's Purchase Agreement, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); provided that a Qualifying Bidder agrees that its legal counsel will coordinate in good faith with Debtor's legal counsel to discuss and explain Qualifying Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable; provided, further that the offer contains a covenant to cooperate with the Debtor to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;
- v. provide for the Qualifying Bidder to serve as a backup bidder (the "**Back-Up Bidder**") if the Qualifying Bidder's bid is the next highest and best bid (the "**Back-Up Bid**") after the Successful Bid (as defined below);

- w. include written evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the subject bid;
- x. provide a good faith cash deposit (the "**Deposit**") in an amount equal to ten percent (10%) of the purchase price provided for in the proposal (or such additional amount as may be determined by the Debtor in its reasonable discretion and in consultation with the Consultation Parties) to be deposited, prior to the Bid Deadline, with an escrow agent selected by the Debtor (the "**Escrow Agent**") pursuant to the escrow agreement to be provided by the Debtor to the Qualifying Bidders (the "**Escrow Agreement**"); and
- y. provide for liquidated damages in the event of the Qualifying Bidder's breach of, or failure to perform under, the Purchase Agreement equal to the amount of the Deposit.

The Debtor reserves the right, in consultation with the Consultation Parties, to negotiate with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bid Procedures; and (b) have waived the right to pursue a substantial contribution claim under Bankruptcy Code section 503 related in any way to the submission of its bid, the Bid Procedures, and the Sale.

VII. Bid Deadline

A Qualifying Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties so as to be received on or before **February 12, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the "**Bid Deadline**"); *provided* that the Debtor may extend the Bid Deadline, in consultation with the Consultation Parties, without further order of the Court, so long as any such extension of the Bid Deadline shall apply to all Qualified Bidders. To the extent that the Bid Deadline is extended for all parties, the Debtor shall file a notice on the docket of the Chapter 11 Case indicating the same. **Any party that does not submit a bid by the Bid Deadline (including as extended in accordance with the prior two sentences) will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.**

VIII. Evaluation of Qualifying Bids

The Debtor will deliver by no later than 9:00 a.m. (ET) on the day following the Bid Deadline, copies of all bids from Qualifying Bidders to each of the Consultation Parties.

The Debtor, in consultation with the Consultation Parties, shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid, and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid by no later than 4:00 p.m. (ET) one (1) business day before the commencement of the Auction. In the event that a bid is determined not to be a Qualifying Bid, including with respect to any proposed

credit bid amount, the Qualifying Bidder shall be notified by the Debtor and shall have until the commencement of the Auction to modify its bid to increase the purchase price or otherwise improve the terms of the Qualifying Bid for the Debtor and to provide additional Secured Claim Documentation; *provided* that any Qualifying Bid may be improved at the Auction as set forth herein.

Prior to commencing the Auction, the Debtor shall determine, in consultation with the Consultation Parties, which of the Qualifying Bids, at such time, is the highest or best bid for purposes of constituting the opening bid of the Auction (the “**Baseline Bid**” and the Qualifying Bidder submitting the Baseline Bid, the “**Baseline Bidder**”), and shall notify the Stalking Horse Bidder and all Qualifying Bidders with Qualifying Bids of the Baseline Bid no later than twenty-four (24) hours prior to the opening of the Auction.

IX. No Qualifying Bids

If no timely Qualifying Bids other than any Stalking Horse Bidder’s Qualifying Bid are submitted on or before the Bid Deadline, the Debtor shall not hold an Auction and may request at the Sale Hearing that the Stalking Horse Bidder be deemed the Successful Bidder (as defined herein) and that the Court approve the Stalking Horse Agreement and the transactions contemplated thereunder.

X. Right to Credit Bid

Any Qualifying Bidder who has a valid and perfected lien on any Assets of the Debtor’s estate that is not subject to an objection by the commencement of the Auction (a “**Secured Creditor**”) shall have the right to credit bid all or a portion of the value of such Secured Creditor’s claim within the meaning of Bankruptcy Code section 363(k) and to the extent demonstrated by the Secured Claim Documentation; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured. Notwithstanding anything else set forth herein, the Stalking Horse Bidder will be deemed a Qualifying Bidder, and may submit a credit bid for any Assets at any time before or during the Auction subject to section 363(k) of the Bankruptcy Code.

XI. Auction

If the Debtor timely receives one or more Qualifying Bids for any of the Assets (exclusive of the Stalking Horse Bidder’s Qualifying Bid), then the Debtor shall conduct an auction (the “**Auction**”). Following the Auction, the Debtor will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets, which will be determined by considering, among other things, the following non-binding factors: (a) the terms of the Purchase Agreement requested by each bidder; (b) the extent to which such terms are likely to delay closing of the Sale, the cost to the Debtor and its estate of such modifications or delay, and any incremental financing being offered to accommodate any delay; (c) the total consideration to be received by the Debtor and its estate; (d) the Transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtor’s estate; (f) the impact on employees, trade creditors and

lease and contract counterparties; and (g) any other factors the Debtor or the Consultation Parties may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- a. the Auction shall commence on **February 13, 2024 at 10:00 a.m. (ET)** (the “**Auction Date**”), at Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801;
- b. only the Stalking Horse Bidder and the other Qualifying Bidders with Qualifying Bids (collectively, the “**Auction Bidders**”) shall be entitled to make any subsequent bids at the Auction;
- c. the Auction Bidders shall appear in person at the Auction, or through a duly authorized representative;
- d. only the Debtor, the Auction Bidders, the Consultation Parties, and the Debtor’s creditors and equity holders, together with the professional advisors to each of the foregoing parties, may attend the Auction; provided that any creditors and equity holders desiring to attend the Auction must provide counsel for the Debtor one (1) business day’s written notice of their intent to attend the Auction;
- e. the Debtor and its professional advisors shall direct and preside over the Auction, which shall be transcribed;
- f. the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bid Procedures, the Auction or the Sale;
- g. bidding shall commence at the amount of the Baseline Bid, and the Auction Bidders may submit successive bids in increments of \$50,000 of the current highest and best bid (or Baseline Bid for the first round) (the “**Minimum Overbid Increment**”); provided that: (i) each such successive bid must be a Qualifying Bid; (ii) if the then-highest and best bid is the Stalking Horse Bid, such bid must include the initial overbid amount of \$150,000 (the “**Initial Overbid**”); (iii) any successive bid made by the Stalking Horse Bidder shall only be required to equal the sum of the amount of (A) the Baseline Bid or the then-highest and best bid, as applicable, plus (B) the Minimum Overbid Increment; and (iv) the Debtor shall retain the right to modify the bid increment requirements at the Auction; provided, further, that the Debtor, in consultation with the Consultation Parties, reserves the right to modify the Minimum Overbid Increment during the course of the Auction and shall do so on the record at the Auction;
- h. the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;

- i. all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtor shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtor's announcement of the then-current highest and best bid;
- j. the Debtor and its professional advisors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any applicable order of the Court entered in connection with the Chapter 11 Case, including, without limitation, the Bid Procedures Order, and (ii) disclosed to the Auction Bidders;
- k. each Auction Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating to the Bid Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- l. Auction Bidders shall have the right to make additional modifications to their respective Purchase Agreements or any Stalking Horse Agreement, as applicable, in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtor's discretion, in consultation with the Consultation Parties, be less favorable to the Debtor and its estate than the terms of the Auction Bidders' respective Purchase Agreements or the Stalking Horse Agreement, as applicable, and (ii) each Qualifying Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;
- m. the Debtor and the Consultation Parties shall have the right to request any additional financial information that will allow the Debtor and the Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions

contemplated by their proposal or the Stalking Horse Agreement, as applicable, as may be amended during the Auction, and any further information that the Debtor may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;

- n. upon the conclusion of the Auction, the Debtor shall determine, in consultation with the Consultation Parties, and subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualifying Bids submitted at the Auction, which may be the Stalking Horse Agreement (the “**Successful Bid**”). In making this decision, the Debtor shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the likelihood of the bidder’s ability to close a transaction and the timing thereof, the nature and impact of any variances from the form Purchase Agreement requested by each bidder, and the net benefit to the Debtor’s estate and its creditor constituencies. The bidder submitting such Successful Bid, which may be the Stalking Horse Bidder, shall become the “**Successful Bidder**,” and shall have such rights and responsibilities of the purchaser as set forth in the subject Purchase Agreement, as applicable. The Debtor may, in its sole discretion, designate Back-Up Bids (and the corresponding Back-Up Bidders) to purchase the Assets in the event that the Successful Bidder does not close the Sale; and
- o. prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments, and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

THE SUCCESSFUL BID AND ANY BACK-UP BIDS SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL FIVE (5) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT THE SUCCESSFUL BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

XII. Sale Hearing

The Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse Agreement) will be subject to approval by the Court. The hearing to approve such Successful Bid and any Back-Up Bid (the “**Sale Hearing**”) shall take place, subject to the Court’s availability, on **February 14, 2024 at 1:30 p.m. (prevailing Eastern Time)**. The Sale Hearing may be adjourned by the Debtor from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a hearing agenda or notice on the docket of the Debtor’s Chapter 11 Case. **For the avoidance of doubt, by no later than the time of announcement of the Baseline Bid for the Auction, the Debtor may determine, in consultation with the Consultation Parties, to withdraw the Assets or any**

subset thereof, from the Auction and sale process, and adjourn the Sale Hearing with respect to these Assets on the terms set forth herein.

At the Sale Hearing, the Debtor will seek entry of an order that, among other things: (i) authorizes and approves the Sale to the Successful Bidder (and, if applicable, the Back-Up Bidder), pursuant to the terms and conditions set forth in the applicable Stalking Horse Agreement or Purchase Agreement executed by the Successful Bidder (and, if applicable, the Back-Up Bidder), and that the Assets being transferred in such transaction shall be transferred free and clear of all liens, claims and Encumbrances pursuant to Bankruptcy Code section 363(f); (ii) unless otherwise ordered by the Court, directing that all Encumbrances on the Assets that are sold shall attach to the cash proceeds generated from the sale of such Assets in the same order of priority as they existed prior to the consummation of such sale; (iii) finding that the Stalking Horse Bidder or Successful Bidder, as applicable, is a good faith purchaser pursuant to Bankruptcy Code section 363(m); and (iv) as appropriate, exempting the Sale(s) and conveyance(s) of the Assets from any transfer tax, stamp tax, or similar tax, or deposit under any applicable bulk sales statute.

XIII. Back-Up Bidder

Notwithstanding any of the foregoing, in the event that the Successful Bidder fails to close the Sale by February 20, 2024 (or such date as may be extended by the Debtor, in consultation with the Consultation Parties, and with the agreement of the Back-Up Bidder), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Debtor will be authorized, but not directed, to close the Sale to the Back-Up Bidder, after notice to and consultation with the Committee counsel, subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any other interested parties, as soon as practicable thereafter.

XIV. Return of Deposits

All Deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or the Back-Up Bidder no later than three (3) business days following the conclusion of the Sale Hearing. The deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Purchase Agreement or the Stalking Horse Agreement, as applicable, the Debtor and its estate shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtor and its estate for such breach or failure to perform.

XV. Notice and Consultation Parties

- a. The term “**Notice Parties**” as used in these Bid Procedures shall mean:
 - (i) proposed counsel for the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman

(astulman@potteranderson.com)); and (ii) investment banker to the Debtor, SC&H Group, Inc.; Matt LoCascio (mlocascio@schgroup.com).

- b. The term “**Consultation Parties**” as used in these Bid Procedures shall mean: (i) proposed counsel for the official committee appointed in the Debtor’s Chapter 11 Case (the “**Committee**”), Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com)) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (Don.Detweiler@wbd-us.com)); and (ii) proposed financial advisor to the Committee, Dundon Advisers LLC, 10 Bank Street, Suite 1100 White Plains, NY 10606 (Attn: Matthew J. Dundon (md@dundon.com)).

For the avoidance of doubt, any consultation rights provided to the Consultation Parties by these Bid Procedures shall not limit the Debtor’s discretion in any way and shall not include the right to veto any decision made by the Debtor in the exercise of its business judgment, nor shall any consultation rights waive, impair, or limit any rights of the Consultation Parties, including, without limitation, the right to oppose any relief sought by the Debtor pursuant to or under the Bid Procedures or the Bid Procedures Order.

If a member of the Committee submits a Qualifying Bid, the Committee will continue to have consultation rights as set forth in these Bid Procedures; *provided* that the Committee shall exclude such member from any discussions or deliberations regarding the sale of the Assets and shall not provide any information regarding the sale of the Assets to such member.

XVI. Fiduciary Out

Nothing in the Bid Procedures shall require the Debtor to take any action, or to refrain from taking any action to the extent the Debtor reasonably determines in good faith that refraining from taking such action or taking such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law, provided, however, that nothing herein shall deprive the Stalking Horse Bidder of any rights that it may have under the Stalking Horse Agreement, the Bid Procedures Order, or applicable law.

XVII. Reservation of Rights

Notwithstanding any of the foregoing, the Debtor and its estate reserve the right to, after consultation with the Consultation Parties, modify these Bid Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, allow for bidding on only a portion of the Assets and not all of them, modify bidding increments, waive terms and conditions set forth herein with respect to any or all potential bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.

Exhibit 2 to Bid Procedures Order

Sale Notice

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

In re:

HUMANIGEN, INC.,¹

Debtor.

Chapter 11

Case No. 24-10003 (BLS)

Re: Docket No. 10

**NOTICE OF BID PROCEDURES, AUCTION, HEARING,
AND DEADLINES RELATING TO THE SALE OF
SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTOR**

PLEASE TAKE NOTICE that on January 4, 2024 the above-captioned debtor and debtor in possession (the “**Debtor**”) in the above-captioned case (the “**Chapter 11 Case**”), filed its *Motion of Debtor for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtor’s Assets, (B) Scheduling an Auction and a Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtor to Enter Into the Stalking Horse Agreement, (E) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (F) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtor’s Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* [Docket No.10] (the “**Bid Procedures and Sale Motion**”).² The Debtor seeks to complete a sale (the “**Transaction**”) of substantially all of its assets (the “**Assets**”) to a prevailing bidder or bidders (the “**Successful Bidder**”) at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to Bankruptcy Code section 363 (the “**Auction**”).

PLEASE TAKE FURTHER NOTICE that, on January __, 2024, the Bankruptcy Court entered an order [Docket No. __] (the “**Bid Procedures Order**”) approving the Bid Procedures set forth in the Bid Procedures and Sale Motion, which set the key dates and times related to the sale of the Debtor’s Assets. **All interested bidders should carefully read the Bid Procedures.** To the extent there are any inconsistencies between the Bid Procedures and the summary description of its terms and conditions contained in this notice, the terms of the Bid Procedures shall control.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bid Procedures, the Debtor must receive a Qualifying Bid from interested bidders in writing, on or before **February 12, 2024 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtor (the “**Bid Deadline**”). To be considered, Qualifying Bids must be sent to the following at or before the

¹ The Debtor’s mailing address in this chapter 11 case is 533 Airport Boulevard, Suite 400, Burlingame, CA 94010 and the last four digits of the Debtor’s federal tax identification number are 7236.

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures and Sale Motion.

Bid Deadline: (a) investment banker to the Debtor, SC&H Group, Inc. (Attn: Matt LoCascio (mlocascio@schgroup.com)); (b) counsel for the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com)); and (b) proposed counsel for the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com)) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (Don.Detweiler@wbd-us.com)).

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, if the Debtor receives one or more Qualifying Bids (other than the Stalking Horse Agreement) by the Bid Deadline, the Auction will be conducted on **February 13, 2024 at 10:00 a.m. (prevailing Eastern Time)** at Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801, or at such other place, date and time as may be designated by the Debtor.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, the Debtor has designated certain Assigned Contracts that may be assumed or assumed and assigned to the Successful Bidder. By **January 24, 2024**, the Debtor shall send a notice to each counterparty to an Assigned Contract setting forth the Debtor's calculation of the cure amount, if any, that would be owing to such counterparty if the Debtor decided to assume or assume and assign such Assigned Contract, and alerting such nondebtor party that their contract may be assumed and assigned to the Successful Bidder (the "**Cure and Possible Assumption and Assignment Notice**").

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, any counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of their Assigned Contract(s) must file with the Bankruptcy Court and serve an objection (a "**Contract Objection**") so it is actually received on or before **February 5, 2024 at 4:00 p.m. (prevailing Eastern Time)**, by (a) proposed counsel for the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com)); (b) counsel to the DIP Lender and Stalking Horse Bidder, Pashman Stein Walder Hayden, P.C., 1007 North Orange Street, 4th Fl., #183, Wilmington, Delaware 19801 (Attn: Joseph C. Barsalona II (jbarsalona@pashmanstein.com) and Henry Jaffe (hjaffe@pashmanstein.com)); (c) proposed counsel for the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com)) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (Don.Detweiler@wbd-us.com)); and (d) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attention: Hannah McCollum (Hannah.McCollum@usdoj.gov)). Where a counterparty to an Assigned Contract files a timely Cure or Assignment Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or an objection to the possible assignment of that counterparty's Assigned Contract, and the parties are unable to

consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtor's ability to assign the Assigned Contract to the Successful Bidder will be determined at the Sale Hearing (as defined below).

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the sale of the Assets to the Successful Bidder (the "**Sale Hearing**") before the Honorable Brendan L. Shannon, U.S. Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, _th Floor, Courtroom No. _, on **February 14, 2024 at 1:30 p.m. (prevailing Eastern Time)**, or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or on the agenda for such Sale Hearing. Objections to the sale of the Assets to (i) the Stalking Horse Bidder must be filed and served so they are received no later than **4:00 p.m. (prevailing Eastern Time) on February 13, 2024**, or (ii) the Successful Bidder if not the Stalking Horse Bidder must be filed and served so they are received no later than **February 14, 2024 at the Sale Hearing**, in each case to be received by (a) proposed counsel for the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com)); (b) counsel to the DIP Lender and Stalking Horse Bidder, Pashman Stein Walder Hayden, P.C., 1007 North Orange Street, 4th Fl., #183, Wilmington, Delaware 19801 (Attn: Joseph C. Barsalona II (jbarsalona@pashmanstein.com) and Henry Jaffe (hjaffe@pashmanstein.com)); (c) proposed counsel for the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com)) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (Don.Detweiler@wbd-us.com)); and (d) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attention: Hannah McCollum (Hannah.McCollum@usdoj.gov)).

PLEASE TAKE FURTHER NOTICE that the Debtor is seeking to waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) in order for the Sale to close as soon as practicable upon entry of the Sale Order by this Court.

PLEASE TAKE FURTHER NOTICE that this notice is subject to the full terms and conditions of the Bid Procedures and Sale Motion, the Bid Procedures Order, and the Bid Procedures, which shall control in the event of any conflict, and the Debtor encourage parties in interest to review such documents in their entirety. A copy of the Bid Procedures and Sale Motion, the Bid Procedures and the Bid Procedures Order may be obtained (a) by contacting proposed counsel for the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com)); (b) for free by accessing the website of the Debtor's noticing agent, Epiq Corporate Restructuring, LLC ("**Epiq**"), located at <https://dm.epiq11.com/humanigen>; or (c) for a fee via PACER at <http://www.deb.uscourts.gov>.

Dated: [____], 2024
Wilmington, Delaware

Respectfully submitted,

/s/

M. Blake Cleary (No. 3614)

Christopher M. Samis (No. 4909)

Aaron H. Stulman (No. 5807)

Sameen Rizvi (No. 6902)

POTTER ANDERSON & CORROON LLP

1313 N. Market Street, 6th Floor

Wilmington, Delaware 19801

Telephone: (302) 984-6000

Facsimile: (302) 658-1192

Email: bcleary@potteranderson.com

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astulman@potteranderson.com

srizvi@potteranderson.com

Proposed Counsel to the Debtor and Debtor in Possession

Exhibit 3 to Bid Procedures Order

Cure and Possible Assumption and Assignment Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

HUMANIGEN, INC.,¹

Debtor.

Chapter 11

Case No. 24-10003 (BLS)

**NOTICE TO COUNTERPARTIES TO POTENTIALLY ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES REGARDING
CURE AMOUNTS AND POSSIBLE ASSIGNMENT TO THE STALKING HORSE
BIDDER OR SUCH OTHER SUCCESSFUL BIDDER AT AUCTION**

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR
AFFILIATES MAY BE COUNTERPARTY TO ONE OR MORE EXECUTORY
CONTRACTS AND/OR UNEXPIRED LEASES WITH THE DEBTOR.**

**PARTIES RECEIVING THIS NOTICE SHOULD (1) READ THIS NOTICE
CAREFULLY AS YOUR RIGHTS MAY BE AFFECTED BY THE
TRANSACTIONS DESCRIBED HEREIN AND (2) LOCATE THEIR NAME AND
CONTRACT AND/OR LEASE ON APPENDIX I HERETO**

PLEASE TAKE NOTICE that on January 4, 2024, the above-captioned debtor and debtor in possession (the “**Debtor**”) in the above-captioned case (the “**Chapter 11 Case**”), filed its *Motion of Debtor for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtor’s Assets, (B) Scheduling an Auction and a Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtor to Enter Into the Stalking Horse Agreement, (E) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (F) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially All of the Debtor’s Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* [Docket No. 10] (the “**Bid Procedures and Sale Motion**”).²

¹ The Debtor’s mailing address in this chapter 11 case is 533 Airport Boulevard, Suite 400, Burlingame, CA 94010 and the last four digits of the Debtor’s federal tax identification number are 7236.

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bid Procedures and Sale Motion.

PLEASE TAKE FURTHER NOTICE that, on January 23, 2024, the Court held a hearing to consider the entry of an order (the “**Bid Procedures Order**”), which such order (a) set key dates, times, and procedures related to the Sale (the “**Sale**”) of substantially all of the Debtor’s assets (the “**Assets**”) pursuant to an auction (the “**Auction**”) overseen by the Bankruptcy Court, which Auction is scheduled to occur on **February 13, 2024 at 10:00 a.m. (prevailing Eastern Time)**, (b) authorized the Debtor to enter into the stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”), (c) established certain procedures relating to the Debtor’s assumption and assignment of executory contracts and unexpired leases in connection with the Sale, and (d) granted related relief.³ Approval of the Sale to the Stalking Horse Bidder or such other Successful Bidder (as defined in the Bid Procedures Order) after the results of the Auction and the Debtor’s assumption and assignment of any executory contracts and unexpired leases in connection therewith, is scheduled to take place at a hearing before the Court on **February 14, 2024 at 1:30 p.m. (prevailing Eastern Time)** (the “**Sale Hearing**”). The Sale Hearing may be adjourned by the Court or the Debtor without further notice other than such adjournment announced in open court or a notice of adjournment filed on the Court’s docket.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bid Procedures Order, the Debtor may assume and assign the executory contract(s) and/or unexpired lease(s) to which you may be a counterparty to the Stalking Horse Bidder or such other Successful Bidder after the outcome of the Auction, if one is held.

PLEASE TAKE FURTHER NOTICE that the Debtor has conducted a review of its books and records and has determined the cure amount for unpaid monetary obligations under such contract or lease is set forth in the right-hand column on Appendix I (the “**Cure Amount**”). Objections, if any, to the Cure Amount, the possible assignment of its executory contract or unexpired lease, or the provision of adequate assurance of future performance by the Stalking Horse Bidder (each, a “**Contract Objection**”) must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, and (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Bankruptcy Court and served on the following parties so as to be actually received on or before **February 5, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the “**Contract Objection Deadline**”): (a) proposed counsel for the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com)); (b) counsel to the DIP Lender and Stalking Horse Bidder, Pashman Stein Walder Hayden, P.C., 1007 North Orange Street, 4th Fl., #183, Wilmington, Delaware 19801 (Attn: Joseph C. Barsalona II (jbarsalona@pashmanstein.com) and Henry Jaffe (hjaffe@pashmanstein.com)); (c) proposed counsel for the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com)) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (Don.Detweiler@wbd-us.com)); and (d) the United States Trustee for the District of Delaware,

³ To the extent there are any inconsistencies between the Bid Procedures Order and the summary description of the terms and conditions contained in this Notice, the terms of the Bid Procedures Order shall control.

844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attention: Hannah McCollum (Hannah.McCollum@usdoj.gov)).

PLEASE TAKE FURTHER NOTICE that objections (each, an “**Post-Auction Objection**”) to the (i) the conduct at the Auction (if held), (ii) the sale to the Successful Bidder if the Successful Bidder is not the Stalking Horse Bidder, or (iii) solely with respect to the non-Debtor Counterparties to the Contracts, to the specific identity of and adequate assurance of future performance provided by the Successful Bidder (only if it is not the Stalking Horse Bidder) must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the legal and factual bases thereof, (d) be filed no later than **February 14, 2024 at the Sale Hearing** (the “**Post-Auction Objection Deadline**”), and (e) be served on: (i) proposed counsel for the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com)); (ii) counsel to the DIP Lender and Stalking Horse Bidder, Pashman Stein Walder Hayden, P.C., 1007 North Orange Street, 4th Fl., #183, Wilmington, Delaware 19801 (Attn: Joseph C. Barsalona II (jbarsalona@pashmanstein.com) and Henry Jaffe (hjaffe@pashmanstein.com)); (iii) proposed counsel for the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com)) and Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (Don.Detweiler@wbd-us.com)); and (iv) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attention: Hannah McCollum (Hannah.McCollum@usdoj.gov)).

PLEASE TAKE FURTHER NOTICE that if no objection to the Cure Amount or the assignment of your Executory Contract(s) or Unexpired Lease(s) to the Successful Bidder is filed by the Contract Objection Deadline or Post-Auction Objection Deadline (as applicable), **you will be (a) forever barred from objecting to the Cure Amount or provision of adequate assurance of future performance and from asserting any additional cure or other amounts with respect to your contract(s) or lease(s), and the Debtor and the Stalking Horse Bidder or the Successful Bidder (as applicable) shall be entitled to rely solely upon the Cure Amount, (b) deemed to have consented to the assumption or assumption and assignment, and (c) forever barred and estopped from asserting or claiming defaults exist, that conditions to assignment must be satisfied under such contract(s) and/or lease(s) or that there is any objection or defense to the assumption and assignment of such contract(s) and/or lease(s).**

PLEASE TAKE FURTHER NOTICE that if you agree with the Cure Amount indicated on Appendix I and otherwise do not object to the Debtor’s assumption or assumption and assignment of your contract(s) and/or lease(s), you need not take any further action.

PLEASE TAKE FURTHER NOTICE that each of the Debtor, the Stalking Horse Bidder or the Successful Bidder (if such Successful Bidder is a bidder other than the Stalking Horse Bidder) reserves all rights with respect to any executory contract or unexpired lease identified on Appendix I, including any Cure Amounts identified therein whether any purported executory contract identified on Appendix I is an executory contract that can be assumed and assigned or rejected pursuant to section 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, the Bid Procedures, and the Bid Procedures Order, as well as all related exhibits, including the proposed Sale Order, are available: (a) upon request from proposed counsel to the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com) and Aaron H. Stulman (astulman@potteranderson.com)); (b) for free from the website of the Debtor's noticing agent, Epiq Corporate Restructuring, LLC ("**Epiq**"), located at <https://dm.epiq11.com/humanigen>; or (c) for a fee via PACER at <http://www.deb.uscourts.gov>.

Dated: [____], 2024
Wilmington, Delaware

Respectfully submitted,

/s/

M. Blake Cleary (No. 3614)

Aaron H. Stulman (No. 5807)

Brett M. Haywood (No. 6166)

Sameen Rizvi (No. 6902)

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Proposed Counsel to the Debtor and Debtor in Possession

Appendix I

[Counterparty Name]	[Contract/Lease]	[Cure Amount]
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