

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

In re:

OMEGA THERAPEUTICS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10211 (BLS)

DEBTOR'S MOTION FOR (I) AN ORDER PURSUANT TO SECTIONS 105, 363, 364, 365, 503 AND 507 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 6004, 6006 AND 9007 AND DEL. BANKR. L.R. 2002-1 AND 6004-1 (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (B) APPROVING THE DEBTOR'S ENTRY INTO STALKING HORSE APA AND RELATED BID PROTECTIONS; (C) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) SCHEDULING AN AUCTION AND SALE HEARING; (E) APPROVING FORMS AND MANNER OF NOTICE OF RESPECTIVE DATES, TIMES, AND PLACES IN CONNECTION THEREWITH; AND (F) GRANTING RELATED RELIEF; (II) AN ORDER (A) APPROVING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF CLAIMS, LIENS, AND ENCUMBRANCES; AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) CERTAIN RELATED RELIEF

The above-captioned debtor and debtor in possession (the "Debtor", "Omega", or the "Seller") hereby moves (this "Motion") this Court for entry of an order, in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"), (a) approving the bidding procedures (the "Bidding Procedures") attached as **Exhibit 1** to the Bidding Procedures Order in connection with the sale of all or substantially all of the Debtor's assets (the "Assets" or "Purchased Assets"); (b) approving various forms and the manner of notice of respective dates, times and places in connection therewith; (c) authorizing the Debtor to enter into and perform under an asset purchase agreement substantially in the form attached hereto as **Exhibit B** (the "Stalking Horse APA") and

¹ The Debtor's federal tax identification number is: 81-3247585. The mailing address for the Debtor is 140 First Street, Suite 501, Cambridge, MA 02141.

the underlying bid, the “Stalking Horse Bid”) between the Debtor and Pioneering Medicines 08-B, Inc. (or its designee) (“PM08-B”, the “Stalking Horse Bidder” or the “Buyer”), subject to the solicitation of higher or otherwise better offers for the Debtor’s Assets; (d) approving the Bid Protections (defined below) granted to the Stalking Horse Bidder; (e) approving procedures for the assumption and assignment of designated executory contracts and unexpired leases (the “Assignment Procedures”); (f) scheduling the auction (the “Auction”) and the date and time of the hearing to approve the sale (the “Sale Hearing”) of the Purchased Assets and assumption of certain liabilities of the Debtor (the “Assumed Liabilities”); and (g) granting related relief, by which the Debtor will solicit and select the highest or otherwise best offer for the purchase of the Purchased Assets and assumption of the Assumed Liabilities. The Debtor further requests that, at the Sale Hearing, the Court (as defined below) enter an order (the “Sale Order”) (a) authorizing the Sale of the Purchased Assets (the “Sale”) free and clear of all liens, claims, interests and other encumbrances (collectively, “Liens”); (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (c) granting related relief.² In support of this Motion, the Debtor relies upon and incorporates by reference the *Declaration of Kaan Certel in Support of Debtor’s Chapter 11 Petition and First Day Motions* (D.I. 19) (the “First Day Declaration”) and the *Declaration of Steven W. Bremer in Support of the Debtor’s Bidding Procedures Motion* (the “Bremer Declaration”).

As discussed herein, the Debtor proposes the following timeline for conducting the Sale process:

Event	Deadline
Bidding Procedures Hearing	Wednesday, March 12, 2025, at 1:30 p.m. (ET)

² The proposed form of Sale Order will be filed with the Court prior to the Bidding Procedures Hearing.

Deadline for Debtor to File Notice of Proposed Cure Amounts and Adequate Assurance	Friday, March 14, 2025
Deadline to Serve Bid Procedures Order, Sale Order and Sale Notice	Friday, March 14, 2025
Bid Deadline	Tuesday, April 1, 2025, at 5:00 p.m. (ET)
Deadline to Designate Qualified Bids	Wednesday, April 2, 2025
Auction	Thursday, April 3, 2025, at 10:00 a.m. (ET)
Sale Objection Deadline	Thursday, April 3, 2025, at 4:00 p.m. (ET)
Deadline to Serve Notice of Successful Bidder and Cure Notice	Friday, April 4, 2025
Deadline to File Supplemental Sale Objection and Objection to Assumption or Cure Amount (if Successful Bidder is Different than Stalking Horse Bidder)	Monday, April 7, 2025, at 4:00 p.m. (ET)
Sale Hearing (Proposed)	Thursday, April 10, 2025, at [●] (ET)

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this chapter 11 case and this Motion 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this case and the Motion is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Rule 9013-1(f) of the *Local Rules of the United States Bankruptcy Court for the District of Delaware* (the “Local Rules”), the Debtor consents to the entry of a final order with respect to this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory bases for the relief requested in this Motion are sections 105, 363, 364, 365, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 1005, 2002, 6004, 6006 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 6004-1.

BACKGROUND

4. On February 10, 2025 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtor continues to manage its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed in this case.

5. Additional details regarding the Debtor, its business, the events leading to the commencement of this case, and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration and incorporated herein by reference.

6. Omega is a development-stage biotechnology company pioneering a new systematic approach to use mRNA therapeutics as programmable epigenetic medicines using its OMEGA Epigenomic Programming platform. Founded in 2016, Omega is a publicly traded company with its stock listed on the Nasdaq Global Market (ticker symbol: OMGA). Omega is a corporation organized under the laws of the State of Delaware and has its offices in Cambridge, Massachusetts.

7. As detailed in the First Day Declaration, the Debtor has incurred losses each year since its incorporation. The Debtor is a research and development company and has never generated any revenue from product sales. The Debtor has devoted almost all of its financial resources to research and development, including preclinical development activities and preparing for and conducting clinical trials of its product candidates.

8. While the Debtor has historically relied heavily on debt and equity financings to fund operations, the Debtor's business prospects have suffered in recent months. Thus, the Debtor retained the following advisors to assist in pursuing various strategic alternatives: Morris, Nichols, Arsht & Tunnell LLP ("Morris Nichols") as restructuring counsel; Portage Point Partners ("Portage Point") as investment banker and restructuring advisor; and Mr. Jeff Varsalone, who was elected and appointed to the Debtor's board as the sole member of the Restructuring Committee.

9. The Debtor's continued financial distress made it clear that a restructuring through this chapter 11 case (the "Chapter 11 Case") would be necessary.

10. Accordingly, by this Motion, the Debtor seeks approval of the Bidding Procedures, which provide the necessary time to conduct a value maximizing Chapter 11 sale process while ensuring all interested parties receive sufficient and reasonable notice and an opportunity to object. Moreover, the Bidding Procedures include provisions allowing the Debtor to engage with one or more potential Stalking Horse Bidders (as defined below) that will set a guaranteed floor for the value of the Debtor's Assets. In addition, by this Motion the Debtor further requests that, at the Sale Hearing, the Court enter the Sale Order (a) authorizing the Sale free and clear of all Liens; (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (c) granting related relief.

PREPETITION MARKETING AND SALE PROCESS

11. As described in the First Day Declaration, in fall 2024, the Debtor engaged a financial advisor (the “Prior Financial Advisor”), who commenced a marketing and sale process, soliciting indications of interest for various transaction types, including but not limited to, an acquisition, synergistic merger, reverse merger, business combination, strategic collaboration, licensing agreement, or other transaction. As part of this process, the Prior Financial Advisor and the Debtor reached out to 78 potential strategic partners, lenders, or acquirers, soliciting interest.

12. As part of this process, the Debtor received a non-binding proposal (the “Mirai Proposal”) from Mirai Bio, Inc. (“Mirai”), an affiliate of Flagship Pioneering, Inc. (with its affiliates, “Flagship”), the founder of the Debtor and whose affiliates collectively hold a majority of the Company’s stock. Given the receipt of the Mirai Proposal, the Board formed a special committee of independent directors (the “Special Committee”) to consider the Mirai Proposal and alternatives thereto, including those arising out of the Prior Financial Advisor’s marketing process.

EVENTS LEADING TO THIS CHAPTER 11 CASE

13. In January 2025, while it was considering various options, the Company’s projections indicated that it would be able to satisfy its Minimum Cash Covenant through at least April 2025. However, on January 13, 2025, while the Special Committee’s process was ongoing, and without prior notice, the Debtor received a notice of default (the “Notice”) under the Loan Agreement, pursuant to which BoC declared all outstanding obligations under the Loan Agreement immediately due and payable, purportedly in accordance with Section 9.1(g) of the Loan Agreement. That same day, BoC swept \$14,666,666.72 of deposits of the Debtor held by BoC—substantially all of the Company’s cash—and applied those amounts to satisfy the balance of the

Debtor's obligations under the Loan Agreement (the "Cash Sweep"). The Debtor believes the Cash Sweep was improper.

14. The Cash Sweep left the Debtor without adequate liquidity to continue operating in the ordinary course for more than a short period of time without emergency bridge funding from a third party source. The Debtor, working with its advisors, evaluated all strategic alternatives, including a potential chapter 7 filing, while soliciting potential bridge funding from numerous sources.

15. To that end, the Debtor engaged in conversations with BoC, and the Special Committee engaged in conversations with Flagship, in an effort to obtain short-term bridge financing to allow the Debtor to continue as a going concern while the Special Committee continued its work. It became quickly apparent that, without an immediate cash infusion, the Debtor would need to terminate its remaining employees, cease operations, and effect a precipitous winddown. In response to the Debtor's urgent liquidity needs, and in an effort to find a path forward that allowed for the Debtor to continue operating as a going concern and prevent a value destructive shutdown of its programs, Flagship, through its affiliate PM08-B, indicated its willingness to provide bridge financing if the Debtor were to consider filing the Chapter 11 Case.

16. The Board determined to appoint a new independent director with expertise in restructuring matters and designate that director as a special committee of the Board (the "Restructuring Committee") to, among other things, act on behalf of the Debtor in any transaction with Flagship or the PM Entities. At the direction of the Restructuring Committee, the Debtor negotiated and entered into a Restructuring Support Agreement (the "RSA") with PM08-B, pursuant to which PM08-B will serve as the DIP Lender and Stalking Horse Bidder to enable to Debtor to run robust marketing and sale process in the Chapter 11 Case through which the Debtor

will seek to implement a value-maximizing sale process of all or substantially all of the Debtor's assets pursuant to section 363 of the Bankruptcy Code (the "Sale").

17. As set forth in the RSA and in the Stalking Horse APA, a copy of which is attached to this Motion as **Exhibit B**, PM08-B committed to a purchase price comprised of (a) a credit bid in an amount equal to the DIP Obligations (as defined in the DIP Facility); (b) the assumption of assumed liabilities as set forth in the Stalking Horse APA; and (c) the payment of cure amounts for any assumed contracts and leases. Notably, the Stalking Horse Bid will be subject to higher or otherwise better offers in accordance with the Debtor's proposed bidding procedures. The Debtor will continue marketing its assets throughout the Chapter 11 Case.

18. The terms of the Stalking Horse Bid—including the Bid Protections—are reasonable under the circumstances and were the product of extensive, good faith, arm's length negotiations between the Debtor, solely through the Debtor's Restructuring Committee, which is independent and does not include any PM08-B or Flagship-related members, and the Stalking Horse Bidder during the period leading up to the Petition Date.

19. The proposed postpetition marketing process ensures that the assets will be comprehensively marketed without unduly delaying the progress of this case. With the assistance of Portage Point, the Debtor began a marketing process for substantially all of its assets on the Petition Date (the "Postpetition Marketing Process"). The Postpetition Marketing Process contemplated by the Bidding Procedures will leave no doubt that, at the conclusion of that process, the Debtor will have broadly marketed the Debtor's assets and identified the highest or otherwise best offer for its assets. As of the date of the filing hereof, over 96 parties have been contacted as part of the Postpetition Marketing Process, and the Debtor, with the assistance of Portage Point, will continue contacting additional prospective buyers.

20. The Debtor believes, in an exercise of its business judgment, that approval of the Stalking Horse APA and related Bid Protections, as well as the Bidding Procedures, will set this case on a positive trajectory and are essential to the Debtor's ability to position itself to identify and consummate the sale or restructuring transaction that maximizes value for its creditors. Accordingly, the Debtor respectfully submits that the Court should grant the relief requested herein.

THE PROPOSED SALE AND BIDDING PROCEDURES

A. Summary of Key Terms of the Stalking Horse Bid

21. By this Motion, the Debtor is requesting approval of the designation of the Stalking Horse Bidder and the Stalking Horse Bid on the terms provided in the Stalking Horse APA, as well as approval of reasonable and customary Bid Protections. Specifically, the Bid Protections consist of an expense reimbursement of up to \$300,000.00 on account of reasonable documented costs, fees and expenses incurred in connection with the transactions contemplated by the Stalking Horse Bid. The Bid Protections do not contemplate or provide for any break-up fee to be paid to the Stalking Horse Bidder. Given the Debtor's need to maximize the value of the Assets through a timely and efficient marketing and sale process, the ability to designate a Stalking Horse Bid and offer Bid Protections is justified, appropriate and essential.

22. In accordance with Local Rule 6004-1(b), the pertinent terms of the Stalking Horse APA are summarized in the following table.³ The Debtor respectfully submits that all terms of the Stalking Horse APA, including those required to be highlighted under Local Rule 6004-1(b), are fair, reasonable, and appropriate under the circumstances in light of the parties' good

³ This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Stalking Horse APA, the latter governs in all respects. Capitalized terms used but not otherwise defined in this summary shall have the meanings set forth in the Stalking Horse APA.

faith, arm's-length negotiation of the Stalking Horse Bid, the support of the Debtor's key creditor constituencies for the Debtor's entry into such agreement, and the substantial benefits the Debtor and its estate will realize as a result thereof, including the establishment of a baseline price for the Debtor's asset.

Provision	Summary Description
Sellers	OMEGA THERAPEUTICS, INC.
Stalking Horse Bidder	Pioneering Medicines 08-B, Inc. or its designee (" <u>Buyer</u> ")
Purchase Price	The purchase price for the Purchased Assets is comprised of the following (collectively, the " <u>Purchase Price</u> "): (a)(i) a credit bid pursuant to section 363(k) of the Bankruptcy Code for all DIP Obligations, including any and all costs, fees, expenses, premiums and other amounts under the DIP Loan Agreement, and (ii) the full amount of any Prepetition Secured Obligations that have not been discharged with the Roll-Up for the DIP Collateral, in an aggregate amount of not less than \$11,461,086.00; (b) the assumption of assumed liabilities as set forth in the Stalking Horse APA; and (c) the payment of Cure Amounts.
Purchased Assets	Purchased Assets include all of the right, title and interest of Seller in, to and under the tangible and intangible assets (including goodwill), properties, rights, going concern value, claims and Contracts used, useful, or held for use in, or related to, the business of Seller (but excluding Excluded Assets) wherever situated and of whatever kind and nature, real or personal, as of the closing (the " <u>Closing</u> ") of the Sale, including the Avoidance Actions and the Specified Claims.
Excluded Assets:	The Excluded Assets are set forth in Section 2.2 of the Stalking Horse APA.
Assumption of Contracts; Cure Amounts	The Stalking Horse APA includes a preliminary schedule of executory contracts and unexpired leases to be assumed, sold and assigned to Buyer (each, an "<u>Assumed Contract</u>" and collectively, the "<u>Assumed Contracts</u>"), which schedule may be modified on or before three (3) Business Days prior to the Closing by Buyer in its sole discretion to add or remove any Assumed Contract(s). For all executory contracts and real property leases not assumed and assigned or rejected as of the Closing, Buyer will have the right to designate such contracts for assumption.
Other Terms and Conditions	The Stalking Horse APA includes representations, warranties, covenants, and Closing conditions, including with respect to the conduct of the business pending closing and the transition of certain

	employees, that are customary for purchase agreements in chapter 11 related to the Seller's line of business, and mutual releases.
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23. The following chart discloses certain information required to be disclosed pursuant to Local Rule 6004-1(b):⁴

Rule	Disclosure/Location
Sale to Insider <i>Local Bankr. R. 6004-1(b)(iv)(A)</i>	The Stalking Horse Bidder is an affiliate of Flagship Pioneering, Inc., who through certain affiliated funds, directly or indirectly owns a majority of the common equity in the Debtor and is therefore an insider of the Debtor. To ensure the fairness of the sale process, the Debtor created an independent restructuring committee comprised of an independent director who, in consultation with Debtor's professionals, determined that the Stalking Horse Bidder proposed a fair bid for the assets to be acquired in the Stalking Horse APA and that entry into the Stalking Horse APA is in the best interests of the estate as it sets a floor price for the Assets and creates a structure around the purchase of the Debtor's assets. At all times, the Stalking Horse Bidder has been represented by separate counsel and negotiations resulting in entry into the Stalking Horse APA have been conducted at arm's-length and in good faith.
Agreements with Management <i>Local Bankr. R. 6004-1(b)(iv)(B)</i>	Section 6.4 of the Stalking Horse APA provides that the Stalking Horse Bidder will identify any employees to whom Buyer intends to make an offer of employment.
Releases <i>Local Bankr. R. 6004-1(b)(iv)(C)</i>	Section 6.9 of the Stalking Horse APA provides that upon Closing and subject to Bankruptcy Court approval, Seller and Buyer, on behalf of themselves and their past, present and future controlled Affiliates and its and such Affiliates' Representatives, mutually release and waive all claims against each other and their respective current and former officers, directors, stockholders, employees, agents, representatives, attorneys, investors, parents, predecessors, subsidiaries, successors, assigns, and affiliates for any events or circumstances occurring before Closing, except with respect to (a) any rights under the Stalking Horse APA, any of the Related Agreements, any of the DIP Loan Documents or any other agreement between the parties entered after the date hereof; and (b) fraud, gross negligence, or willful misconduct.
Private Sale/No Competitive Bidding <i>Local Bankr. R. 6004-1(b)(iv)(D)</i>	Not applicable. The Sale to the Stalking Horse Bidder is subject to higher or otherwise better bids pursuant to the Bidding Procedures.

⁴ Undefined terms used in the summary chart shall have the meanings ascribed to them in the Stalking Horse APA.

Closing and Other Deadlines <i>Local Bankr. R. 6004-1(b)(iv)(E)</i>	The Debtor's proposed timeline for the sale process in this chapter 11 case is set forth on page 3, <i>supra</i> . Closing of the Sale shall occur following the satisfaction or waiver of the conditions set forth in Article VII of the Stalking Horse APA, but no later than the Outside Date.
Good Faith Deposit <i>Local Bankr. R. 6004-1(b)(iv)(F)</i>	N/A
Interim Arrangements with Stalking Horse Bidder <i>Local Bankr. R. 6004-1(b)(iv)(G)</i>	The Debtor is not entering into any interim arrangements with the Stalking Horse Bidder.
Use of Proceeds <i>Local Bankr. R. 6004-1(b)(iv)(H)</i>	N/A
Tax Exemption <i>Local Bankr. R. 6004-1(b)(iv)(I)</i>	N/A
Record Retention <i>Local Bankr. R. 6004-1(b)(iv)(J)</i>	Section 2.1(g) of the Stalking Horse APA provides that the Books and Records are Purchased Assets. The Seller, however, has the right to retain copies of any Records until the winding up and termination of Seller.
Sale of Avoidance Actions <i>Local Bankr. R. 6004-1(b)(iv)(K)</i>	Section 2.1(l) of the Stalking Horse APA provides for the purchase of all rights and claims of Seller against third parties, including Avoidance Actions and Specified Claims; provided, however, that effective immediately upon the Closing, all Avoidance Actions under Chapter 5 of the Bankruptcy Code shall be waived and released by the Buyer.
Successor Liability <i>Local Bankr. R. 6004-1(b)(iv)(L)</i>	Section 6.8 of the Stalking Horse APA provides that the parties intend that the Stalking Horse Bidder is not a mere continuation of the Debtor or its estate, and that the Stalking Horse Bidder shall not have any successor liability of any kind or character.
Sale Free and Clear of Unexpired Leases <i>Local Bankr. R. 6004-1(b)(iv)(M)</i>	None.
Credit Bid <i>Local Bankr. R. 6004-1(b)(iv)(N)</i>	The Purchase Price for the Purchased Assets includes a credit bid in an aggregate amount of all DIP Obligations and the Prepetition Secured Obligations, which is an amount not less than \$11,461,086.00.
Relief from Bankruptcy Rule 6004(h) <i>Local Bankr. R. 6004-1(b)(iv)(O)</i>	The Debtor seeks a waiver of the 14-day stays under Bankruptcy Rules 6004(d) and 6004(h), as described in more detail below.

B. The Bid Protections

24. To induce the Stalking Horse Bidder to expend the time, energy and resources necessary to negotiate and ultimately execute the Stalking Horse APA and to keep the Stalking Horse Bid memorialized therein open and irrevocable through the Debtor's competitive auction process, the Debtor has agreed to provide the Stalking Horse Bidder with, and seeks this Court's approval of, certain protections pursuant to the terms of the Stalking Horse APA, namely, the reimbursement of the Stalking Horse Bidder's reasonable documented costs, fees and expenses incurred in connection with the transactions contemplated by the Stalking Horse Bid, up to a maximum amount equal to \$300,000.00 (the "Bid Protections"). Notably, the Bid Protections do not include any break-up fee for the Stalking Horse Bidder.

C. Bidding Procedures Order

25. By this Motion, the Debtor seeks entry of the Bidding Procedures Order: (a) approving the Bidding Procedures; (b) approving various forms and the manner of notice of respective dates, times and places in connection therewith; (c) approving PM08-B as the Stalking Horse Bidder and the Bid Protections; (d) establishing the Assignment Procedures; and (e) scheduling the Auction and a Sale Hearing.

(i) The Bidding Procedures

26. To maximize the value of the Purchased Assets for the benefit of the Debtor's estate and stakeholders, the Debtor seeks to continue its competitive marketing process by implementing a process for soliciting higher or otherwise better bids than the bid set forth in the Stalking Horse APA. Specifically, the Bidding Procedures would provide 43 days between the filing of this Motion and the Bid Deadline, which the Debtor believes will be sufficient to allow potential bidders to conduct diligence and formulate competing bids. On the Petition Date, the

Debtor's proposed investment banker, Portage Point began the Debtor's postpetition marketing process. The Debtor, in consultation with Portage Point and the Debtor's other advisors, entered into the Stalking Horse APA to provide a floor for a bid on the Debtor's assets.

27. As described more fully in the Bidding Procedures and the Bidding Procedures Order, the Debtor seeks approval to sell the Purchased Assets to a Qualified Bidder, determined in accordance with the Bidding Procedures and Bidding Procedures Order, that submits the highest or otherwise best offer for the Purchased Assets, including that any Sale that is to a bidder other than the Stalking Horse Bidder, must include cash in an aggregate amount of all DIP Obligations and the Prepetition Secured Obligations, which is an amount not less than \$11,461,086.00, plus the Bid Protections, plus the minimum overbid amount. The Debtor requests that competing bids for the Purchased Assets be governed by the Bidding Procedures and Bidding Procedures Order, which provide:

- a. the requirements a Potential Bidder must satisfy to be entitled to participate in the bidding process and become a Qualified Bidder;
- b. the requirements for Qualified Bidders to submit bids and the method and criteria by which such bids become Qualified Bids;
- c. the deadline by which bids must be submitted;
- d. the procedures for conducting the Auction;
- e. the assumption and assignment procedures for executory contracts and unexpired leases; and
- f. various other matters relating to the sale process generally, the Sale Hearing, return of any Good Faith Deposits, and designation of a Back-Up Bidder.

28. Local Rules 6004-1(c)(i)(A) and (B) further provide that a bid procedures motion must highlight "[a]ny provision governing an entity becoming a qualified bidder" and

“[a]ny provision governing a bid being a qualified bid.” Local Rule 6004-1(c)(i)(A) and (B). The Bidding Procedures provide as follows with respect to qualifying bids³:

- a. **Participation Requirements.** To participate in the formal bidding process or otherwise be considered for any purpose hereunder, a person (other than the Stalking Horse Bidder) interested in submitting a bid (an “Interested Party”) must deliver to Portage Point (sbremer@pppllc.com and llansio@pppllc.com), on behalf of the Debtor, the following documents (the “Preliminary Bid Documents”):
 - i. an executed confidentiality agreement on terms reasonably acceptable to the Debtor (each, a “Confidentiality Agreement”);
 - ii. a statement and other factual support demonstrating to the Debtor’s satisfaction in the exercise of its reasonable business judgment that the Interested Party has a bona fide interest in purchasing the Purchased Assets; and
 - iii. preliminary verbal or written proof by the Interested Party of its financial capacity to close a proposed transaction at the Purchase Price (as defined below), which may include (a) current unaudited or verified financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), or (b) sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any executory contracts and unexpired leases to be assumed by the Debtor and assigned to the Potential Bidder in connection with the proposed transaction.
- b. **Due Diligence.** An Interested Party must deliver the Preliminary Bid Documents to Portage Point (sbremer@pppllc.com and llansio@pppllc.com) to be eligible to receive due diligence information concerning the Debtor and its assets. After the Debtor determines, in its reasonable discretion that an Interested Party has satisfied the Preliminary Bid Document Requirements (such Interested Party, a “Potential Bidder”), the Debtor will provide to each such Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, provided that if any Potential Bidder is (or is affiliated with) a competitor of the Debtor, the Debtor will not be required to disclose to

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To the extent any inconsistencies exist between the summary provided in this Motion and the actual terms of the Bidding Procedures, the Bidding Procedures shall control. Capitalized terms used but not otherwise defined in connection with this summary shall have the meanings ascribed to such terms in the Bidding Procedures.

such Potential Bidder any trade secrets, proprietary information, or other commercially sensitive information unless, under the Debtor's business judgment, the Confidentiality Agreement executed by such Potential Bidder (i) sufficiently protects the Debtor's estate, and (ii) contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used by such Potential Bidder or its Affiliates for an improper purpose or to gain an unfair competitive advantage. Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtor or its advisors regarding such Potential Bidder and its contemplated transaction. Access may be terminated by the Debtor in its reasonable discretion at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, the Potential Bidder breaches any obligations under its confidentiality agreement, or the Debtor becomes aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtor may restrict or limit access of a Potential Bidder to the Data Room if the Debtor determines, based on its reasonable business judgment that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder. The Potential Bidder shall return or destroy any non-public information the Debtor or its advisors provided to the Potential Bidder in accordance with the terms of the confidentiality agreement executed by the Debtor and the Potential Bidder.

- c. **Bid Requirements.** To be eligible to participate in the Auction, each Potential Bidder must submit a proposal to purchase the Purchased Assets (a "Bid") to the Notice Parties by Tuesday, April 1, 2025, at 5:00 p.m. (ET) (the "Bid Deadline") which must:
- i. state that the applicable Potential Bidder offers to purchase and/or otherwise sponsor, finance (including through the issuance of debt in connection with such bid) some or all of the Purchased Assets pursuant to a transaction that is no less favorable to the Debtor's estate as the Debtor may reasonably determine, following consultation with the Consultation Parties⁵, than the transactions contemplated in the Stalking Horse APA;
 - ii. be accompanied by a deposit (each, a "Good Faith Deposit") in the

⁵ "Consultation Parties" means the DIP Lender and any statutory committee appointed in this case; provided, that to the extent that any Consultation Party, including any member of any statutory committee, submits a bid, including the Stalking Horse Bid or an alternative credit bid or otherwise, for any Purchased Assets in connection with these Bidding Procedures, or is a participant in any active or prospective Bid with respect to any Purchased Asset(s), such applicable Consultation Party shall immediately no longer be a Consultation Party unless and until such party unequivocally revokes its Bid and waives its right to continue in the bidding process. For the avoidance of doubt, the DIP Lender/Stalking Horse Bidder will not be a Consultation Party unless and until it unequivocally revokes the Stalking Horse Bid and waives its right to continue in the bidding process.

form of a wire transfer or certified check or such other form acceptable to the Debtor in its sole discretion, payable to the order of the Debtor, in an amount equal to 10% of the cash portion of the Purchase Price being bid;

- iii. specify the amount of cash or other consideration offered by the Potential Bidder (the “Purchase Price”), which Purchase Price must include an amount of cash consideration at closing that exceeds the aggregate sum of the following: (a) the aggregate consideration set forth in the Stalking Horse APA, including the amount of the Credit Bid and the assumption of the Assumed Liabilities and the Cure Amounts; (b) the Bid Protections; and (c) an initial minimum bid increment of \$500,000; provided that, if a bid includes forms of consideration other than cash, the bidder shall include an analysis or description of the value of such non-cash components, including any supporting documentation, to assist the Debtor and the Consultation Parties in evaluating the bid;
- iv. be irrevocable by the Potential Bidder until the selection of the Successful Bid in accordance with the terms of these Bidding Procedures; provided that, other than a Bid submitted by the Stalking Horse Bidder, if such Potential Bidder is selected as the Successful Bidder or Back-Up Bidder and is required to be a Back-Up Bidder hereunder, its Bid must remain irrevocable until the Debtor’s consummation of a sale with the Successful Bidder;
- v. include an executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction at the Purchase Price (or in the case of the Stalking Horse Bidder, at the purchase price set forth in the Stalking Horse APA) (the “Transaction Documents”), which Transaction Documents must include a copy of the proposed asset purchase agreement marked against the Stalking Horse APA to show all changes requested by the Potential Bidder including, but not limited to, treatment of any assumed liabilities;
- vi. include a list which specifies in detail which of the Debtor’s unexpired leases and executory contracts are to be assumed by the Debtor and assigned to the Potential Bidder in connection with the consummation of the proposed transaction;
- vii. include a proposed sale order and be marked against the proposed form of Sale Order;
- viii. provide a commitment to close no later than Monday, April 21, 2025;

- ix. not be conditioned on unperformed due diligence, obtaining financing or any internal approval or otherwise be subject to contingencies more burdensome than those in the Stalking Horse APA;
- x. include (a) a description of all governmental, licensing, regulatory or other filings, approvals or consents that are required to be made or obtained to close the proposed transaction, together with evidence of the ability to make or obtain such filings, consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the making, obtainment or effectiveness of any such filings, consents or approvals and (b) an estimated timeframe for making and/or obtaining any such required governmental, licensing, regulatory or other filings, approvals or consents;
- xi. contain written evidence of a commitment for financing or other evidence of the ability to consummate a proposed transaction at the Purchase Price (including sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any executory contracts and unexpired leases to be assumed by the Debtor and assigned to the Potential Bidder in connection with the proposed transaction), satisfactory to the Debtor in its reasonable discretion, with appropriate contact information for such financing sources;
- xii. contain written evidence satisfactory to the Debtor in its reasonable discretion of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and consummation of such Bid and the transaction(s) contemplated therein and any Overbid(s) (as defined below), and related Transaction Documents;
- xiii. not request or entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment;
- xiv. fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid), participating in or benefiting from (including through license or similar arrangement with respect to the assets to be acquired in connection with such Bid) such Bid (a "Participating Party"), and the complete terms of any such sponsorship, participation, financing or benefit;

- xv. state that the Potential Bidder agrees to serve as a backup bidder if such bidder's Qualified Bid is selected at the Auction as the next highest or next best bid after the Successful Bid;
 - xvi. state that the bid constitutes a good faith, bona fide offer to effectuate the proposed transaction and is not subject to or conditioned on any further due diligence, and is irrevocable (a) until the selection of the Successful Bid in accordance with these Bidding Procedures; or (b) if the bid is selected as a Successful Bid or as a Backup Bid;
 - xvii. expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for any of the Purchased Assets and/or otherwise participating in the Auction or the Sale process;
 - xviii. state whether the Potential Bidder intends to offer future employment to any of the Debtor's employees;
 - xix. contain such other information as may be reasonably requested by the Debtor;
 - xx. include a written acknowledgement by such Potential Bidder that it agrees to all of the terms for sale set forth in these Bidding Procedures;
 - xxi. include an agreement to provide any other information reasonably requested by the Debtor; and
 - xxii. be received by the Bid Deadline.
- d. **Qualified Bidder.** A qualified bidder ("Qualified Bidder") is a Potential Bidder that, in the Debtor's reasonable determination, following consultation with the Consultation Parties (i) has timely submitted a Bid by the Bid Deadline that satisfies each of the requirements listed above in the section entitled "Bid Requirements" and (ii) is able to consummate the proposed transaction within the required timeframe if selected as the Successful Bidder (such Bid submitted by a Qualified Bidder, a "Qualified Bid"); provided that the Debtor reserves the right to work with any Potential Bidder to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. Within one (1) business day after a Potential Bidder delivers all of the documents described above, the Debtor will determine in its reasonable discretion, following consultation with the Consultation Parties, whether such Potential Bidder is a Qualified Bidder, and notify the Potential Bidder of such determination. For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse APA is a Qualified Bid, and (iii) the Stalking Horse Bidder is authorized to submit

any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

29. If the Debtor receives one or more Qualified Bids (in addition to the Stalking Horse Bid) by the Bid Deadline, the Debtor will conduct the Auction to determine the highest or otherwise best Qualified Bid with respect to the Purchased Assets. If no Qualified Bids (other than the Stalking Horse Bid) are received by the Bid Deadline, the Auction shall be canceled and the Debtor will file with the Court, serve on the Sale Notice Parties (as defined below), and cause to be published on the Debtor's claim and noticing agent's website, a notice containing the following information as applicable: (a) a statement that the Auction for the Purchased Assets has been canceled; (b) a declaration that the Stalking Horse Bidder is deemed the Successful Bidder and the Stalking Horse APA will be the Successful Bid; and (c) the date, time, and location of the Sale Hearing.

30. The Debtor proposes that the following procedures govern any Auction:

- a. **Baseline Bid.** No later than one (1) Business Day prior to the commencement of the Auction, the Debtor will (i) notify all Qualified Bidders and Notice Parties in writing of the highest or otherwise best Qualified Bid, as determined by the Debtor in its reasonable discretion, following consultation with the Consultation Parties (the "Baseline Bid"), and (ii) provide all Qualified Bidders and Notice Parties with complete copies of all Transaction Documents and all other bid materials submitted by each other Qualified Bidder, subject to exclusion of any confidential financial information as determined by the Debtor in its reasonable discretion or which has been so designated by the applicable Qualified Bidder. The Debtor's determination of which Qualified Bid constitutes the Baseline Bid shall take into account factors such as the projected percentage recovery to general unsecured creditors pursuant to such Qualified Bid and the certainty of such recovery, whether all administrative, priority and secured claims will be paid in full under such Qualified Bid and any other factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the estate. No later than the day prior to the commencement of the Auction, each Qualified Bidder that has timely submitted a Qualified Bid must inform the Debtor whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid will nevertheless remain fully enforceable

against such Qualified Bidder; provided further that the Stalking Horse Bidder will not be required to, but may, attend and participate at the Auction.

- b. **Auction Date and Location.** The Auction will commence on or before Thursday, April 3, 2025, at 10:00 a.m.. (Prevailing Eastern Time) at the offices of **Morris Nichols Arsht & Tunnell, LLP, 1201 N. Market Street, Wilmington, DE 19801**, or on such other date and/or at such other location as determined by the Debtor. The Debtor may determine that the Auction will be held virtually.
- c. **Participation Requirements.** Only a Qualified Bidder that has submitted a Qualified Bid by the Bid Deadline will be eligible to participate at the Auction. The authorized representatives of each of the Qualified Bidders (including the Stalking Horse Bidder) and the Debtor will be permitted to attend the Auction. In addition, pursuant to Local Rule 6004-1, all creditors of the Debtor who have not submitted Bids may attend the Auction as observers, provided that they send an email to the undersigned counsel indicating that they intend to attend the Auction no less than one (1) Business Day prior to the Auction, provided further that the Debtor's right to object on an emergency basis to any such creditor's proposed attendance at the Auction is reserved.
- d. **Auction Procedures.** The Debtor and its professionals will direct and preside over the Auction. At the start of the Auction, the Debtor will describe the terms of the Baseline Bid. All Bids made thereafter must be Overbids (as defined below) and will be made and received on an open basis, and all material terms of each Bid will be fully disclosed to all other Qualified Bidders. The Debtor will maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, the Successful Bid and the Back-Up Bid. Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of the Purchased Assets. The Debtor, in its reasonable discretion, reserve the right to conduct the Auction in a manner designed to maximize value based upon the nature and extent of the Qualified Bids received.

During the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least \$100,000 (each, an "Overbid"). The Debtor will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with these Bidding Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid. Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or other non-cash consideration acceptable to the Debtor in accordance with these Bidding Procedures. To the extent that an Overbid has been accepted entirely or in

part because of the addition, deletion, or modification of a provision or provisions, including the addition or removal of Purchased Assets or Assumed Contracts, in the applicable Transaction Documents or the Stalking Horse APA, the Debtor will provide notice to each participant of the value ascribed by the Debtor to any such added, deleted, or modified provision or provisions, or added or removed Purchased Assets or Assumed Contracts, with such value being determined by the Debtor in its reasonable discretion following consultation with the Consultation Parties.

Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtor accepts a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid (as defined below). To the extent not previously provided (which will be determined by the Debtor), a Qualified Bidder submitting an Overbid must submit at the Debtor's request, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid.

31. As set forth in more detail in the Bidding Procedures and subject to the conditions provided for therein, at the conclusion of the Auction, the Debtor, in the exercise of its reasonable business judgment will select the highest or otherwise best bid submitted by a Qualified Bidder during the Auction that the Debtor believes is most beneficial to the Debtor (provided that any such bid (other than a bid of the Stalking Horse Bidder) must include cash in an amount not less than all DIP Obligations plus the Bid Protections) (the "Successful Bid"). The Debtor may, in its discretion, select a Back-Up Bid as set forth in the Bidding Procedures. The Successful Bidder and Back-Up Bidder (except for the Stalking Horse Bidder), following the completion of the Auction, must increase their Good Faith Deposits so that they equal 10% of the cash portion of such Successful Bid or Back-Up Bid, as applicable.

(ii) Assignment Procedures

32. The Debtor is seeking approval of the Assignment Procedures for notifying counterparties to executory contracts and unexpired leases of proposed Cure Amounts (as defined

below) and the timing of assumption and assignment or rejection with respect to those executory contracts and unexpired leases (the “Contracts” and “Leases”) that the Debtor proposes to assume and assign to the Successful Bidder or reject. The following is a summary of the Assignment Procedures:

- a. **Cure Notice.** On or before the date that is three (3) business days after entry of the Bidding Procedures Order, the Debtor shall file with the Court a notice of the proposed assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the “Cure Notice”). The Debtor will serve the Cure Notice via first class mail on all non-Debtor counterparties to Contracts and Leases, and their respective known counsel, and provide a copy of same to the Stalking Horse Bidder. The Cure Notice shall inform each recipient that its respective Contract or Lease may be assumed and assigned to the Stalking Horse Bidder, and the timing and procedures relating to such assumption and assignment, and, to the extent practicable (i) the title of the Contract or Lease, (ii) the name of the counterparty to the Contract or Lease, (iii) the Debtor’s good faith estimates of the amounts required to cure all defaults in connection with such Contract or Lease (the “Cure Amount”), and (iv) the deadline by which any such Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure amount, and the procedures relating thereto; provided, however, that service of a Cure Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease. If the Debtor identifies additional Contracts or Leases that might be assumed by the Debtor and assigned to the Successful Bidder, the Debtor will promptly send a supplemental Cure Notice to the applicable counterparties to such Contract or Lease.
- b. **Adequate Assurance.** The Debtor shall promptly provide, upon a counterparty’s request to the Debtor’s counsel, adequate assurance information, which shall include, by evidence of the Successful Bidder’s capacity to consummate the Sale with cash on hand, unconditional committed financing from a reputable financing institution, documented to the satisfaction of the Debtors in consultation with the Consultation Parties, to any counterparty (and counsel, if known) to any Contract that may be assumed by the applicable Qualified Bidder, including the Stalking Horse Bidder.
- c. **Objections.** Objections, if any, to the proposed assumption and assignment of any Contract or Lease or to the Cure Amount proposed with respect thereto must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any other orders of the Court; (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 Court and served so as to be actually received by the Sale Objection Deadline.

Promptly following the Debtor's selection of the Successful Bidder and the Back-Up Bidder, if any, at the conclusion of the Auction, the Debtor shall announce the Successful Bidder and the Back-Up Bidder, if any, and shall file with the Court a notice of the Successful Bidder and the Back-Up Bidder, if any. If and only if the Stalking Horse Bidder is not the Successful Bidder for the Purchased Assets, counterparties to the Debtor's Contracts and Leases shall have until Monday, April 7, 2025, at 4:00 p.m. (ET) to object to the assumption and assignment of a Contract or Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

- d. **Dispute Resolution.** Any objection to the proposed assumption and assignment or related Cure Amount of a Contract or Lease in connection with the proposed Sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing. To the extent any such objection is resolved or determined unfavorably to the Debtor, the Debtor may, subject to the terms of an agreement with the Successful Bidder (including the Stalking Horse APA), file a notice rejecting the applicable Contract or Lease after such determination.
- e. **Post-Closing Assumption and Assignment.** To the extent the Debtor seeks to assume and assign a Contract or Lease after the closing of the Sale, and subject to the terms and conditions set forth in the Successful Bidder Purchase Agreement, the Successful Bidder shall have the right, which right may be exercised at any time and from time to time, to provide written notice to the Debtor of the Successful Bidder's election to require the Debtor to assume the Contract(s) or Lease(s) identified in the subject Assumption Notice(s) and assign same to the Successful Bidder's designee.

In the case of any Contracts and Leases that the Debtor seeks to assume and assign after the Closing Date pursuant to the Stalking Horse APA (or the asset purchase agreement of the Successful Bidder), within three (3) business days following receipt of a notification by the Successful Bidder that a Contract or Lease is designated for assumption and assignment, the Debtor shall file with the Court a written notice of the Debtor's intent to assume and assign such Contract or Lease (an "Assumption Notice"), substantially in the form attached hereto as **Exhibit 3** to the Bidding Procedures Order. The Debtor shall serve such Assumption Notice via

CM/ECF, electronic mail (if available), and first-class mail on each of the following parties (the “Assumption Notice Parties”):

(i) each counterparty to any Contract or Lease (and their known counsel) to be assumed or assigned by the Debtor, (ii) the United States Trustee for the District of Delaware, (iii) counsel to any official committee appointed in the Debtor’s case, and (iv) counsel to the Stalking Horse Bidder or other Successful Bidder, as applicable.

The Assumption Notice shall set forth the following information, to the best of the Debtor’s knowledge: (i) if the Contract relates to a Lease, then the street address of the real property that is the subject of such Lease that the Debtor is assuming and assigning or, in all other cases, a description of the Contract that the Debtor is assuming and assigning, (ii) the name and address of the affected counterparties or landlords (and their known counsel), (iii) a description of the deadlines and procedures for filing objections, if so permitted pursuant to the Assignment Procedures set forth herein, to the Assumption Notice (as set forth below), and (iv) any proposed cure amounts that arise solely following the Closing and have not otherwise been paid in the ordinary course, if any. The assumption and assignment of each such Contract or Lease shall be effective as of the date of the applicable Assumption Notice without any further order of the Court, with objections to the proposed cure amount, if any, to be resolved thereafter as set forth below.

A party in interest may object to an Assumption Notice solely with respect to the proposed cure amount contained therein and only to the extent such objection could not have been raised prior to the Sale Objection Deadline. Any such objection must be in writing and filed and served so that such objection is filed with this Court and actually received by the Debtor and the Assumption Notice Parties no later than seven (7) days after the date the Debtor served the applicable Assumption Notice.

If no permitted objection is timely filed and served with respect to the Assumption Notice, any non-Debtor party to such Contract or Lease shall be deemed to have consented to the cure amount set forth in such Assumption Notice. If a permitted objection is timely filed and served on the Assumption Notice Parties in the manner specified above, unless the parties agree otherwise in writing, a hearing will be scheduled to consider that objection.

33. Any party who fails to timely file an objection to its scheduled Cure Amount listed on the Cure Notice or to the assumption and assignment of a Contract or Lease (a) shall be forever barred, estopped and enjoined from objecting thereto, including (i) making any demands

for additional cure amounts or monetary compensation on account of any alleged defaults for the period prior to the applicable objection deadline against the Debtor, its estate or the Stalking Horse Bidder or other Successful Bidder selected at the Auction, if any, with respect to any such Contract or Lease and (ii) asserting that the Successful Bidder has not provided adequate assurance of future performance as of the date of the Sale Order; (b) shall be deemed to consent to (i) the sale of the Purchased Assets as approved by the Sale Order and (ii) the assumption and assignment of the Contracts and Leases; and (c) shall be forever barred and estopped from asserting or claiming against the Debtor or the assignee of the relevant Contract or Lease that any conditions to assumption and assignment of such Contract or Lease must be satisfied (pursuant to section 365(b)(1) of the Bankruptcy Code or otherwise).

(iii) Scheduling and Notice

34. Given the Debtor's marketing efforts to date and the marketing and diligence period to be established by the Bidding Procedures, the proposed timeline is sufficient to complete a fair and open sale process that will position the Debtor to maximize the value received for the Debtor's assets. The schedule is sufficient to accomplish this goal, while respecting the necessity to consummate the Sale as quickly as possible to maximize the value received for the Debtor's assets.

35. **Notice of Sale Hearing.** Within three (3) days of the entry of the Bidding Procedures Order, or as soon thereafter as practicable, the Debtor shall cause to be served, by first-class mail, postage prepaid, a sale notice (the "Sale Notice") setting forth, among other things, the dates established for submission of Qualified Bids, the Auction and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as **Exhibit 4**, upon: (a) the United States Trustee for the District of Delaware (b) all known material creditors of the Debtor, including

contingent, unliquidated and disputed creditors, as well as each creditor listed on the Debtor's consolidated list of twenty (20) largest unsecured creditors, as filed with the Debtor's chapter 11 petition, (c) any official committee appointed in the Debtor's case; (d) all parties asserting a security interest in the Purchased Assets to the extent any such interest is reasonably known to the Debtor; (e) applicable federal, state, county and city tax and regulatory authorities; (f) all entities known to have expressed a written interest in a transaction with respect to the Purchased Assets or that have been identified by the Debtor or its advisors as a potential Buyer of the Purchased Assets; (g) local, state and federal authorities and agencies that have issued licenses or permits to the Debtor with respect to the operation and use of the Purchased Assets; (h) each counterparty to the Debtor's Contracts and Leases; and (i) all parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

36. **Post-Auction Supplement.** Following the Auction, the Debtor will promptly file with the Court a supplement (the "Supplement") that will inform the Court of the results of the Auction. The Supplement will identify, among other things, (a) the Successful Bidder as the proposed Buyer of the Purchased Assets; (b) the amount and form of consideration to be paid by the Successful Bidder for the Purchased Assets; (c) the Assumed Liabilities to be assumed by the Successful Bidder; (d) the Contracts and Leases that may be assumed by the Debtor and assigned to the Successful Bidder, or the Debtor's rights and interests therein sold and transferred to the Successful Bidder, as the case may be, in connection with the Sale; and (e) the executory contracts or unexpired leases designated to be rejected by the Debtor in connection with the Sale. The Supplement will also include similar information relating to the Back-Up Bidder and the Back-Up Bid. In addition, the Debtor will file as soon as practicable (a) any revised proposed Sale Order approving the Sale to the Successful Bidder; (b) a copy of the purchase agreement entered

into by the Debtor and the Successful Bidder following the Auction; and (c) any additional information or documentation relevant to the Successful Bid. The Debtor will file the Supplement on the docket for the chapter 11 case as promptly as is reasonably practicable prior to the Sale Hearing, but will not be required to serve the same on any parties-in-interest in the chapter 11 case.

B. Sale Order

37. The Debtor requests that this Court set the Sale Hearing for a date that is not later than Thursday, April 10, 2025. At the Sale Hearing, the Debtor intends to seek entry of the Sale Order, among other things (a) authorizing and approving the Sale of the Purchased Assets free and clear of all Liens to the fullest extent possible pursuant to Bankruptcy Code section 363(f), including without limitation, successor liability or similar theories, with liens to attach to the proceeds of the Sale; (b) authorizing the assumption and assignment of certain Contracts in connection with a Sale; and (c) granting related relief. The Sale Order will, among other things, contain findings that: (a) the Debtor demonstrated good, sufficient, and sound business purposes and justifications for, and compelling circumstances to promptly consummate the Sale; (b) the Sale is not a fraudulent conveyance; (c) the Buyer is purchasing the Purchased Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, is entitled to and granted the full rights, benefits, privileges, and protections of that provision, and has otherwise proceeded in good faith in all respects in connection with the Sale; (d) the Buyer is not, and shall not be deemed to, as a result of any action taken in connection with the Sale, be a successor or continuation of the Debtor or its estates or to have *de facto* or otherwise, merged or consolidated with or into the Debtor; (e) the Sale does not constitute a *de facto* plan of reorganization or liquidation; and (f) the Bidding Procedures provide proper and adequate notice for these and the other terms and conditions of the bidding, Auction and Sale processes.

BASIS FOR RELIEF REQUESTED

A. Approval of the Sale is Warranted Under Bankruptcy Code Section 363(b), and the Bidding Procedures, Including Entry Into the Stalking Horse APA, are Appropriate and in the Best Interests of the Debtor’s Estate and Creditors.

38. Section 363(b)(1) of the Bankruptcy Code provides that, “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Bankruptcy Code section 105(a) further provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105.

39. A debtor should be authorized to sell assets out of the ordinary course of business pursuant to Bankruptcy Code section 363 if it demonstrates a sound business purpose for doing so. *See In re Fed. Mogul Glob., Inc.*, 293 B.R. 124, 126 (D. Del. 2003) (finding that a court should approve a debtor’s use of assets outside ordinary course of business if debtor can demonstrate a sound business justification for proposed transaction); *see also In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 154 (Bankr. D. Del. 1999) (finding that the debtor’s sound business purpose justified its sale of the assets outside of the ordinary course of business).

40. Indeed, the paramount goal of a chapter 11 process is to maximize the proceeds received by the estate. *See Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564–65 (8th Cir. 1997) (“[A] primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand.”); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 149 (3d Cir. 1986) (noting the fairness and reasonableness of prices); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the . . . debtor’s duty . . . is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting *Cello Bag Co. v. Champion Intl Corp. (In re Atlanta Packaging Prods., Inc.)*, 99 B.R. 124, 131

(Bankr. N.D. Ga. 1988)); *In re Summit Glob. Logistics, Inc.*, No. 08-11566, 2008 WL 819934, at *14 (Bankr. D.N.J. Mar. 26, 2008) (describing a proposed transaction as one that “maximize[d] value and return to interested parties.”). To that end, courts have recognized that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate of a debtor and therefore are appropriate. *See Integrated*, 147 B.R. at 659 (providing that such procedures “encourage bidding . . . to maximize the value of the debtor’s assets.”); *In re Fin. News Network Inc.*, 126 B.R. 152, 156 (S.D.N.Y. 1991) (“[C]ourt-imposed rules for the disposition of assets [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estate.”).

41. With this in mind, courts defer to a debtor’s business judgment in the context of bidding and auction procedures. *See In re Trans World Airlines Inc.*, No. 01-0056, 2001 WL 1820326, at *10 (Bankr. D. Del. Apr. 2, 2001) (“It is not the function of a bankruptcy court to independently exercise a business judgment as to which proposal among competing proposals should be adopted by the debtor in effecting a § 363(b) sale.”).

42. In exercising its fiduciary duties and in the sound exercise of the Debtor’s business judgment, the Debtor has determined that the Bidding Procedures, including entry into the Stalking Horse APA, are the most appropriate method for encouraging competing bids and best position the Debtor to maximize creditor recoveries and achieve the highest or otherwise best offer currently available.

43. The Bidding Procedures provide a framework to facilitate and entertain bids for the Purchased Assets and, if such bids are received, to conduct an Auction in an orderly yet competitive fashion, thereby encouraging bids that maximize the value realized from a sale of the Purchased Assets. In particular, the Bidding Procedures contemplate an open and fair auction

process with minimum barriers to entry and provide Potential Bidders with sufficient time to perform due diligence, many of whom will have likely performed due diligence in the very recent past, and acquire the information necessary to submit a timely and well-informed bid. *See In re Fed. Mogul*, 293 B.R. 124, at 126.

44. The Bidding Procedures provide the Debtor with an adequate opportunity to consider competing bids and select the highest and otherwise best offer for the purchase of substantially all the Debtor's assets. The Debtor therefore believes that submitting the purchase of its assets to a market-based test is the best means to achieve maximum recovery for all stakeholders. Accordingly, the Debtor and its stakeholders believe that the consideration obtained will be fair and reasonable under the circumstances. *In re Summit Glob. Logistics*, 2008 WL 819934, at *14.

45. If the Debtor does not receive any Qualified Bids (other than the Stalking Horse Bid), the Debtor will (a) notify all Potential Bidders and the Court in writing that (i) the Auction is cancelled and (ii) the Stalking Horse Bid is the Successful Bid; and (b) seek authority at the Sale Hearing to consummate the Sale transactions with the Stalking Horse Bidder contemplated by its Stalking Horse APA.

46. Similar bidding, auction and notice procedures have been previously approved by this Court in other chapter 11 cases. *See, e.g., In re Joann, Inc.*, Case No. 25-11068 (CTG) (Bankr. D. Del. Feb. 16, 2025); *In re First Mode Holdings, Inc.*, Case No. 24-12794 (KBO) (Bankr. D. Del. Jan. 17, 2025); *In re Zurvita Holdings, Inc.*, Case No. 24-12823 (MFW) (Bankr. D. Del. Jan. 14, 2025); *In re Oya Renewables Dev. LLC*, Case No. 24-12574 (KBO) (Bankr. D. Del. Dec. 10, 2024); *In re AIO US, Inc.*, Case No. 24-11836 (CTG) (Bankr. D. Del. Oct. 29, 2024); *In re Tupperware Brands Corp.*, Case No. 24-12156 (BLS) (Bankr. D. Del. Oct. 23, 2024); *In re*

Vyair Med., Inc., Case No. 24-11217 (BLS) (Bankr. D. Del. July 11, 2024); *In re Ambri Inc.*, Case No. 24-10952 (LSS) (Bankr. D. Del. June 12, 2024); *In re Zymergen, Inc.*, Case No. 23-11661 (KBO) (Bankr. D. Del. Nov. 20, 2023).

47. In sum, the Debtor believes that the proposed Bidding Procedures, including entry into the Stalking Horse APA, create an appropriate framework for expeditiously establishing that the Debtor is receiving the best or otherwise highest offer for the Purchased Assets. Accordingly, the proposed Bidding Procedures and the Stalking Horse APA are reasonable, appropriate, and within the Debtor's sound business judgment under the circumstances.

B. Approval of the Bid Protections is Appropriate.

48. As described above, the Debtor is proposing the Bid Protections for the Stalking Horse Bidder consisting of an expense reimbursement of up to \$300,000.00 on account of reasonable and documented out-of-pocket expenses, costs and fees incurred in connection with the transactions contemplated by the Stalking Horse Bid. The Bid Protections do not contemplate or provide for any break-up fee to be paid to the Stalking Horse Bidder. The Debtor believes that the Bid Protections are fair and reasonable under the circumstances. The Bid Protections provided for in the Stalking Horse APA were negotiated at arm's-length and in good faith and were a necessary inducement to Stalking Horse Bidder's participation in the proposed sale transaction and willingness to subject its bid to a competitive auction process. As discussed below, the Stalking Horse Bid sets a "floor" value for the Assets that maximizes the likelihood that the Debtor will receive the highest or otherwise best offer for the Assets to the benefit of the Debtor's estate.

49. Approval of the Bid Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two (2) instances in which bid protections may benefit the estate. First, an expense reimbursement

may be necessary to preserve the value of a debtor's estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *In re O'Brien Env't Energy, Inc.*, 181 F.3d at 533. Second, if the availability of expense reimbursements were to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. *See id.*; *see also In re Reliant Energy Channel View LP*, 594 F.3d 200, 206-08 (3d Cir. 2010) (reasoning that a break-up fee should be approved if it is necessary to entice a party to make the first bid or if it would induce a stalking horse bidder to remain committed to a purchase).

50. In *O'Brien*, the Third Circuit reviewed the following nine (9) factors set forth by the lower court as relevant in deciding whether to award bid protections:

- a. the presence of self-dealing or manipulation in negotiating the break-up fee;
- b. whether the fee harms, rather than encourages, bidding;
- c. the reasonableness of the break-up fee relative to the purchase price;
- d. whether the unsuccessful bidder placed the estate property in a "sale configuration mode" to attract other bidders to the auction;
- e. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders or attract additional bidders;
- f. the correlation of the fee to a maximum value of the debtor's estate;
- g. the support of the principal secured creditors and creditors' committees of the break-up fee;
- h. the benefits of the safeguards to the debtor's estate; and
- i. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See In re O'Brien Env't. Energy, Inc., 181 F.3d at 536.

51. While none of the factors is dispositive, an application of the facts to several of such factors supports the approval of the Bid Protections. In particular, the Bid Protections are necessary to preserve the value of the Debtor's estate because they will enable the Debtor to establish an adequate floor value for the Assets and to therefore insist that competing bids be materially higher or otherwise better than the Stalking Horse Bid—a clear benefit to the Debtor's estate. The Stalking Horse Bidder would not agree to act as a stalking horse without the Bid Protections given the substantial time and expense it has incurred in connection with negotiating definitive documentation and the risk that it will be outbid at the Auction. Without the Bid Protections, the Debtor might lose the opportunity to obtain the highest or otherwise best offer for the Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder. The bid of the Stalking Horse Bidder sends a message to all potential bidders that the Assets are at least worth the Purchase Price and puts pressure on potential competing bidders to “put their best foot forward” in formulating their bids. Therefore, without the benefit of the bid of the Stalking Horse Bidder, the bids received at auction for the Assets could be substantially lower than the bid offered by the Stalking Horse Bidder.

52. In addition, the Bid Protections were the product of hard-fought negotiations between the Debtor and the Stalking Horse Bidder, in which the Debtor sought to both minimize the magnitude of Bid Protections payable and limit the circumstances under which they are payable. The resulting Bid Protections—consisting of a \$300,000.00 expense reimbursement, which is less than 3% of the Purchase Price set forth in the Stalking Horse Bid—is within the range of bid protections that have been approved in this District and others. *See In re First Mode Holdings, Inc.*, Case No. 24-12794 (KBO) (Bankr. D. Del. Jan. 17, 2025) (approving

expense reimbursement of up to 3.6% of approximate \$15 million purchase price); *In re Fluid Market, Inc.*, Case No. 24-12363 (CTG) (Bankr. D. Del. Nov. 20, 2024) (approving expense reimbursement of up to 4.9% of approximate \$10 million purchase price); *In re Bostwick Laboratories, Inc.*, Case No. 17-10570 (BLS) (Bankr. D. Del. 2017) (approving expense reimbursement of up to 2.3% of approximate \$6.5 million purchase price). Furthermore, similar expense reimbursements have been approved in this District for insiders serving as stalking horse bidders. See *In re Zymergen, Inc.*, Case No. 23-11661 (KBO) (Bankr. D. Del. Nov. 20, 2023) (approving expense reimbursement of up to \$250,000 of approximate \$5 million purchase price).

53. Finally, payment of the Bid Protections in the context of a sale to another Buyer will not diminish the Debtor's estate to the extent they become payable, as the Bidding Procedures require that any competing bid must exceed the Stalking Horse Bid by an amount in excess of the Bid Protections. Accordingly, based on the foregoing, the Debtor submits that the Bid Protections reflect a sound business purpose, are fair and appropriate under the circumstances, and should be approved.

C. The Purchased Assets Should be Sold Free and Clear of Claims, Liens and Encumbrances Under 11 U.S.C. § 363(f).

54. In the interest of attracting the best offers, the Debtor requests authorization to sell the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances, and other interests attaching to the proceeds of the sale of the Purchased Assets and distributed as provided for in a further order of the Court.

55. Under section 363(f) of the Bankruptcy Code, a debtor may sell estate property free and clear of liens, claims, encumbrances, and other interests if one of the following conditions is satisfied:

- a. applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because section 363(f) of the Bankruptcy Code is written in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Purchased Assets “free and clear” of liens, claims, encumbrances, and other interests. *See, e.g., In re Dura Auto. Sys., Inc.*, 2007 WL 7728109, at *6 n.32 (Bankr. D. Del. Aug. 15, 2007).

56. Furthermore, section 105(a) of the Bankruptcy Code grants the Court broad discretionary powers, providing that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). This equitable power may be utilized to effectuate the provisions of section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *6–7 (Bankr. D. Del. Mar. 27, 2001) (highlighting bankruptcy courts’ equitable authority to authorize sale of estate assets free and clear).

57. The Debtor will present evidence at the Sale Hearing that the Sale satisfies the requirements of section 363(f). Accordingly, the Debtor requests authorization to sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests.

D. A Successful Bidder Should be Entitled to the Protections of Bankruptcy Code Section 363(m).

58. Pursuant to section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See In re Abbotts Dairies of Penn.*, 788 F.2d at 147; *Miami Ctr. Ltd. P'ship v. Bank of New York*, 838 F.2d 1547, 1554 (11th Cir. 1988); *In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Congoleum Corp.*, Case No. 03-51524, 2007 WL 1428477 (Bankr. D.N.J. May 11, 2007); *In re Temtechco, Inc.*, 1998 WL 887256, at *4 (D. Del. 1998).

59. As noted above, any Asset Purchase Agreement executed by a Successful Bidder (including the Stalking Horse APA) will have been negotiated at arm's-length and in good faith in accordance with the Bidding Procedures, with each of the parties represented by its own advisors and counsel. Accordingly, the Debtor requests that the Sale Order include a provision that any Successful Bidder for the Purchased Assets is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtor maintains that providing the Successful Bidder with such protection will best position the Debtor to achieve the maximum price for the Purchased Assets.

E. Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Should be Authorized.

60. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or [unexpired] lease of the debtor." 11 U.S.C. § 365(a). A debtor may assume or reject an executory contract or unexpired lease if its reasonable business judgment supports assumption or rejection. *See, In re Stable Mews Assoc., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984); *see also Grp. of Inst. Invs. v. Chicago M. St. P. & P.R.R. Co.*, 318 U.S. 523 (1943); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989). The business judgment test

“requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting *Stable Mews*). Any more exacting scrutiny would slow the administration of a debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially. See *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

61. Pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default which is required to be cured, including compensating or providing adequate assurance of prompt compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1). The Assignment Procedures, as set forth in greater detail in the Bidding Procedures Order, are appropriate and reasonably tailored to provide counterparties to executory contracts and unexpired leases with adequate notice of the proposed assumption and assignment of their contracts and leases, as well as proposed cure amounts, if any. Such counterparties will then be given an opportunity to object to such cure amounts and assumption and assignment of their contracts and leases. The Assignment Procedures further provide that, in the event an objection is not resolved, the Court will determine the disputed issues. Therefore, the Debtor submits that implementation of the Assignment Procedures is appropriate under the facts and circumstances of the chapter 11 case and the proposed Sale.

62. Once an executory contract is assumed, the trustee or debtor in possession may elect to assign such contract. See *In re Rickel Home Centers, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the

debtor's estate."); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist a trustee in realizing the full value of the debtor's assets). Section 365(f) of the Bankruptcy Code provides that the "trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided." 11 U.S.C. § 365(f)(2). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned.

63. The Debtor submits that the assumption and assignment of executory contracts and unexpired leases to the Contract Party or other Successful Bidder (as applicable), as of the Closing Date is necessary to the consummation of the Sale and is well within the Debtor's sound business judgment. Those contracts and leases are essential to inducing the highest or otherwise best offer for the Purchased Assets because they are necessary to run the Debtor's business. In addition, the Stalking Horse APA provides and Sale Order will provide, that the Stalking Horse Bidder will have (a) cured and/or provided adequate assurance of cure of any default required to be cured and existing prior to the assumption and assignment; and (b) provided compensation or adequate assurance of compensation to any counterparty for actual pecuniary loss to such party resulting from such default.

64. Counterparties to the Debtor's executory contracts and unexpired leases will be provided with a Cure Notice and will have an opportunity to object to the potential assumption and assignment of their contracts and leases prior to the entry of the Sale Order. The Debtor proposes that any counterparty that fails to object to the proposed assumption and assignment of its contract or lease will be deemed to consent to that assumption and assignment pursuant to section 365 of the Bankruptcy Code on the terms set forth in the proposed Bidding Procedures Order and Sale Order, and to the cure amounts identified in the Cure Notice. *See, e.g., In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor was deemed to have consented to sale by not objecting to sale motion).

65. Accordingly, the Debtor submits that the assumption and assignment to the Stalking Horse Bidder or other Successful Bidder of the Debtor's contracts and leases should be approved as an exercise of the Debtor's sound business judgment.

E. The Proposed Notice is Appropriate Under Bankruptcy Rule 2002.

66. The notices contemplated by the Bidding Procedures give notice of the proposed Sale including a disclosure of the time and place of an Auction, the terms and conditions of the Sale, and the deadline for filing any objections. The Debtor submits that the notice procedures comply with Bankruptcy Rule 2002 and include information regarding the Bidding Procedures necessary to enable interested bidders to participate in the Auction, and constitute good and adequate notice of the Bidding Procedures and the other components of the Auction. Therefore, the Debtor respectfully requests this Court approve the proposed notice procedures.

E. Relief from Bankruptcy Rules 6004(h) and 6006(d) is Appropriate.

67. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[u]nless the court orders otherwise, an order

authorizing the use, sale, or lease of property (other than cash collateral) is stayed for 14 days after the order is entered.” Fed. R. Bankr. P. 6004(h). To preserve the value of the Debtor’s estate and limit the costs of administering and preserving the Purchased Assets, it is critical that the Debtor close the sale of the Purchased Assets as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtor hereby requests that the Court waive the fourteen-day stay periods under Bankruptcy Rules 6004(h) and 6006(d).

F. Relief under Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 1005 to Change the Case Caption.

68. Out of an abundance of caution, the Debtor requests authority from the Court to change its name and modify the case caption in the event its corporate name is sold pursuant to the proposed Bidding Procedures as part of the sale process. As a prophylactic measure, the Debtor respectfully requests authorization to change its name and modify the case caption to account for the Debtor’s new name. The proposed new caption would read as follows:

In re:

OT WIND-DOWN, INC.
f/k/a OMEGA THERAPEUTICS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10211 (BLS)

¹ The Debtor’s federal tax identification number is: 81-3247585. The mailing address for the Debtor is 140 First Street, Suite 501, Cambridge, MA 02141.

69. Additionally, to the extent it becomes necessary following the sale process, the Debtor requests that the Court authorize the Clerk of the Court and other parties in interest to take whatever actions are necessary once the Debtor’s name change is complete to update the ECF

filing system and the respective records to reflect the name change of the Debtor, including the insertion of a docket entry which states substantially as follows:

“An order has been entered in this case directing that the caption of this case be changed, in accordance with the corporate name change of Omega Therapeutics, Inc. to OT Wind-Down, Inc.”

70. Section 105(a) of the Bankruptcy Code states that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of a debtor’s assets and may fashion orders as necessary to facilitate the purposes of the Bankruptcy Code. *See Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986). The Debtor submits that any proposed name change, and caption change would have no substantial effect on the Debtor’s estate and would not prejudice, confuse, or mislead parties in interest by the proposed name and caption change. To the extent it becomes necessary, once any name change is complete, the Debtor will file a notice of name change on the Court’s docket. Accordingly, as part of the relief that will be requested at the Sale Hearing, the Debtor requests authority from the Court to change its name and caption of the Chapter 11 Case.

NOTICE

71. The Debtor will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtor’s creditors holding the twenty (20) largest unsecured claims as set forth in the list filed with the Debtor’s petition; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Department of Justice; (f) entities known to have expressed a bona fide interest in a transaction with respect to the Purchased Assets; (g) all entities known to have asserted any lien, claim or encumbrance in or upon any of the Purchased Assets; (h) all federal, state and local environmental, regulatory or taxing authorities or recording offices which have a reasonably known interest in the

relief requested by the Motion; and (i) all parties who have requested notice in this chapter 11 case pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtor respectfully submits that no further notice is necessary.

CONCLUSION

WHEREFORE, the Debtor requests this Court to enter the Bidding Procedures Order, the Sale Order and further relief as the Court may deem just and appropriate.

Dated: February 17, 2025
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Derek C. Abbott

Eric D. Schwartz (No. 3134)
Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
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*Proposed Counsel to the Debtor and
Debtor in Possession*

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

In re:

OMEGA THERAPEUTICS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10211 (BLS)

Hearing Date:

March 12, 2025, at 1:30 p.m. (ET)

Objection Deadline:

March 3, 2025, at 4:00 p.m. (ET)

NOTICE OF HEARING REGARDING DEBTOR'S MOTION FOR (I) AN ORDER PURSUANT TO SECTIONS 105, 363, 364, 365, 503 AND 507 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 6004, 6006 AND 9007 AND DEL. BANKR. L.R. 2002-1 AND 6004-1 (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (B) APPROVING THE DEBTOR'S ENTRY INTO STALKING HORSE APA AND RELATED BID PROTECTIONS; (C) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) SCHEDULING AN AUCTION AND SALE HEARING; (E) APPROVING FORMS AND MANNER OF NOTICE OF RESPECTIVE DATES, TIMES, AND PLACES IN CONNECTION THEREWITH; AND (F) GRANTING RELATED RELIEF; (II) AN ORDER (A) APPROVING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF CLAIMS, LIENS, AND ENCUMBRANCES; AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) CERTAIN RELATED RELIEF

PLEASE TAKE NOTICE that, on February 17, 2025, the above-captioned debtor and debtor in possession (the "Debtor") filed the *Debtor's Motion for an Order (I) Pursuant to Sections 105, 363, 364, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtor's Assets; (B) Approving the Debtor's Entry Into Stalking Horse APA and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; and (II) an Order (A) Approving the Sale of the Debtor's Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory*

¹

The Debtor's federal tax identification number is: 81-3247585. The mailing address for the Debtor is 140 First Street, Suite 501, Cambridge, MA 02141.

Contracts and Unexpired Leases; and (III) Certain Related Relief (the “Motion”), filed contemporaneously herewith.

PLEASE TAKE FURTHER NOTICE that any responses or objections to approval of the relief requested in the Motion must (a) be in writing; (b) be filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **March 3, 2025, at 4:00 p.m. (ET)** (the “Objection Deadline”); and (c) served so as to be received on or before the Objection Deadline by the undersigned proposed counsel to the Debtor.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON MARCH 12, 2025, AT 1:30 P.M. (ET) BEFORE THE HONORABLE BRENDAN L. SHANNON AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6th FLOOR, COURTROOM #1, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT ONLY OBJECTIONS MADE IN WRITING AND TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE PROCEDURES ABOVE WILL BE CONSIDERED BY THE COURT AT SUCH HEARING.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 17, 2025
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Derek C. Abbott

Eric D. Schwartz (No. 3134)

Derek C. Abbott (No. 3376)

Andrew R. Remming (No. 5120)

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*Proposed Counsel to the Debtor and
Debtor in Possession*

EXHIBIT A

Proposed Bidding Procedures Order

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

In re:

OMEGA THERAPEUTICS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10211 (BLS)

Re: D.I. __

**ORDER PURSUANT TO SECTIONS 105, 363, 364, 365, 503 AND 507 OF THE
BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 6004, 6006 AND 9007 AND DEL.
BANKR. L.R. 2002-1 AND 6004-1 (A) APPROVING BIDDING PROCEDURES FOR
THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (B)
APPROVING THE DEBTOR'S ENTRY INTO STALKING HORSE APA AND
RELATED BID PROTECTIONS; (C) APPROVING PROCEDURES FOR THE
ASSUMPTION AND ASSIGNMENT OR REJECTION OF DESIGNATED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) SCHEDULING AN
AUCTION AND SALE HEARING; (E) APPROVING
FORMS AND MANNER OF NOTICE OF RESPECTIVE DATES, TIMES, AND
PLACES IN CONNECTION THEREWITH; AND (F) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the debtor and debtor in possession (the "Debtor", "Omega", or "Seller") in the above-captioned chapter 11 case, for entry of an order, pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006 and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 6004-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (a) authorizing and approving certain proposed bidding procedures (as attached hereto as **Exhibit 1**, the "Bidding Procedures") governing the submission of competing proposals to purchase the Purchased Assets pursuant to section 363 of the Bankruptcy Code, authorizing and approving the Debtor's entry into (but not consummation of) the Asset Purchase Agreement (substantially in the form attached to the Motion

¹ The Debtor's federal tax identification number is: 81-3247585. The mailing address for the Debtor is 140 First Street, Suite 501, Cambridge, MA 02141.

² Capitalized terms not defined herein are defined in the Motion.

as **Exhibit B** and, together with all exhibits and schedules thereto, the “Stalking Horse APA”), by and among the Debtor and Pioneering Medicines 08-B, Inc. (“PM08-B” or the “Stalking Horse Bidder”), pursuant to which the Debtor has agreed to sell the Purchased Assets to the Stalking Horse Bidder, subject to the terms and conditions contained in the Stalking Horse APA, (b) approving the form and manner of notice of the sale of the Purchased Assets (the “Sale Notice”), (c) scheduling a hearing for approval of the sale of the Purchased Assets (the “Sale Hearing”) and setting other related dates and deadlines, and (d) approving procedures for the assumption and assignment of the Debtor’s executory contracts (the “Contracts”) and unexpired leases (the “Leases”) and the form of and manner of notice of proposed cure amounts; and it appearing that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors and all other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor:

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction to consider the Motion in accordance with 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 as of February 29, 2012.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007, and Local Rule 6004-1.

D. 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 Local Rule 2002-1(b) and all other interested parties.

E. The Debtor has articulated good and sufficient reasons for the Court to approve the Bidding Procedures. Such good and sufficient reasons were set forth in the Motion, are incorporated by reference herein, and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

F. The Bidding Procedures are fair, reasonable and appropriate and are designed to maximize the value to be received by the Debtor's estate and creditors. The Bidding Procedures and all such steps and expenses incurred by the Debtor in connection with the implementation of the Bidding Procedures and this Order shall be deemed reasonable and appropriate and within the sound business judgment of the Debtor pursuant to section 363(b) of the Bankruptcy Code.

G. The Stalking Horse APA was entered into in good faith by the Debtor and the Stalking Horse Bidder, and is the result of an arms-length negotiation between the parties that are each represented by sophisticated legal counsel.

H. The Debtor has demonstrated compelling and sound business justifications for entering into the Stalking Horse APA and incurring the administrative obligations arising thereunder or in connection therewith, and the timing and procedures set forth therein.

I. The sale of the Purchased Assets as contemplated in the Stalking Horse APA is in the best interests of the Debtor's estate, its creditors and all other parties in interest, and represents a reasonable exercise of the Debtor's sound business judgment.

J. The Sale Notice, substantially in the form attached hereto as **Exhibit 4**, is reasonably calculated to provide all interested parties with timely and proper notice of the proposed

sale, including: (a) the date, time and place of the Auction (if one is held); (b) the Bidding Procedures and certain dates and deadlines related thereto; (c) the objection deadline for the sale motion and the date, time and place of the Sale Hearing; (d) reasonably specific identification of the assets subject to the proposed sale; (e) instructions for promptly obtaining a copy of the Stalking Horse APA; (f) representations describing the proposed 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; (g) the commitment by the Stalking Horse Bidder to assume certain liabilities of the Debtor; and (h) notice of the proposed assumption and assignment of Contracts and Leases pursuant to the Stalking Horse APA (or to another Successful Bidder selected at the Auction, if any) and the procedures and deadlines for objecting thereto. No other or further notice of the proposed Sale shall be required.

K. The Cure Notice attached hereto as **Exhibit 2** is reasonably calculated to provide all non-Debtor counterparties to the Debtor's Contracts and Leases with proper notice of the potential assumption and assignment of their Contract or Lease, the proposed cure amounts relating thereto and the related assumption and assignment procedures; provided that the mere listing of any Contract or Lease on the Cure Notice does not require or guarantee that such Contract or Lease will be assumed and assigned, and all rights of the Debtor with respect to such Contracts and Leases are reserved.

L. The Bidding Procedures comply with the requirements of Local Rule 6004-1.

M. Entry of this Order is in the best interests of the Debtor's estate, Debtor creditors and all other interested parties.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is hereby GRANTED as set forth herein.
2. All objections filed, if any, in response to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or specifically addressed in this Order, and all reservations of rights included in such objections, are specifically overruled in all respects on the merits.

The Bidding Procedures

3. The Bidding Procedures, attached hereto as **Exhibit 1**, are approved, and the Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.
4. The Bidding Procedures shall govern the submission, receipt and analysis of all Bids, and any party desiring to submit a higher or better offer shall do so strictly in accordance with the terms of this Order and the Bidding Procedures.
5. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bidding Procedures):
 - a. **Bid Deadline**: **Tuesday, April 1, 2025 at 5:00 p.m. (Prevailing Eastern Time)** is the deadline by which all Qualified Bids must be actually received by the parties specified in the Bidding Procedures (the “**Bid Deadline**”).
 - b. **Auction**: **Thursday, April 3, 2025 at 10:00 a.m. (Prevailing Eastern Time)** is the date and time of the Auction, if one is needed, which will be held at the offices of Morris Nichols Arsht & Tunnell LLP 1201 North Market Street, Wilmington, DE 19801; provided, however, that the Debtor, in its discretion, shall have the right to hold the Auction at another place or virtually, with instructions for Qualified Bidders to participate to be

provided prior to the Auction, with notice to all Qualified Bidders and any other invitees.

6. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. As described in the Bidding Procedures, if the Debtor does not receive any Qualified Bids other than from the Stalking Horse Bidder, the Debtor will not hold the Auction, the Stalking Horse Bidder will be named the Successful Bidder, and the Debtor will seek final approval at the Sale Hearing of the sale of the Purchased Assets to the Stalking Horse Bidder, in accordance with the terms of the Stalking Horse APA.

7. If the Auction is conducted, (a) each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding process or the sale; (b) each Qualified Bidder participating in the Auction shall be required to confirm that its Qualified Bid is a good faith, bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bidder; and (c) the Auction shall be conducted openly and shall be transcribed or videotaped.

Approval of Debtor's Entry into the Stalking Horse APA

8. The Debtor is hereby authorized to designate PM08-B, together with any designated affiliate thereof, as the stalking horse bidder (the "Stalking Horse Bidder").

9. The Debtor is authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to enter into and perform under the Stalking Horse APA, subject to the solicitation of higher or otherwise better offers for the Purchased Assets (as defined in the Stalking Horse APA) and entry of the Sale Order.

10. The Stalking Horse APA is authorized and approved in the form attached to the Bidding Procedures Motion as Exhibit B as the stalking horse bid for the Purchased Assets (the “Stalking Horse Bid”).

11. The Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse Bid shall be deemed a Qualified Bid, for all purposes under the Bidding Procedures Order and Bidding Procedures.

12. The Stalking Horse APA shall be binding and enforceable on the parties thereto in accordance with its terms subject to entry of the Sale Order. The failure to describe specifically or include any provision of the Stalking Horse APA or related documents in the Motion or herein shall not diminish or impair the effectiveness of such provision as to such parties. The Stalking Horse APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, solely in accordance with the terms thereof, without further order of the Court.

13. The Bid Protections (as defined in the Stalking Horse APA, and, collectively, the “Bid Protections”) are approved in their entirety. The obligation of the Debtor to pay the Bid Protections shall: (a) be subject to the terms of the Stalking Horse APA; (b) constitute an administrative expense of the Debtor under section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code that shall be indefeasibly paid to the Stalking Horse Bidder from the proceeds of the Sale at Closing; and (c) survive the termination of the Stalking Horse APA, or dismissal or conversion of the Bankruptcy Case.

14. Subject to the Bidding Procedures and entry of the Sale Order, the Debtor and Stalking Horse Bidder are granted all rights and remedies provided to them under the Stalking

Horse APA, including, without limitation, the right to specifically enforce the Stalking Horse APA (including with respect to the Bid Protections) in accordance with its terms.

15. The Debtor is authorized to perform all of its respective pre-closing obligations under the Stalking Horse APA, and such obligations shall be binding upon the Debtor; provided that, for the avoidance of doubt, consummation of the transactions contemplated by the Stalking Horse APA shall be subject to entry of an order approving the sale of the Purchased Assets (the “Sale Order”) and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse APA.

Hearing and Objection Deadline

16. The Sale Hearing shall take place in this Court on **Thursday, April 10, 2025 at :__m. (Prevailing Eastern Time)**; provided that the Sale Hearing may be adjourned without further notice other than announcement in open Court or by the filing of a notice on the docket of this Case or a notice of agenda. Any obligations of the Debtor set forth in the Stalking Horse APA that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order pursuant to the Stalking Horse APA are authorized as set forth herein and are fully enforceable as of the date of entry of this Order.

17. Except as otherwise set forth herein or in the Bidding Procedures or Stalking Horse APA with respect to (a) matters arising under Contracts and Leases following the Closing or (b) the assignment of Contracts and Leases to parties other than the Stalking Horse Bidder, the deadline to file objections, if any, to the transactions contemplated by the Stalking Horse APA or to entry of the Sale Order is **Thursday, April 3, 2025 at 4:00 p.m. (Prevailing Eastern Time)** (the “Sale Objection Deadline”). Objections, if any, **must**: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court; (c)

state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be **actually received** no later than the Sale Objection Deadline, as applicable, by the following parties (the “Notice Parties”): (i) proposed counsel to the Debtor, Morris, Nichols, Arsht & Tunnell, 1201 N. Market Street, 16th Floor, Wilmington, Delaware 19801, Attn: Derek C. Abbott (dabbott@morrisnichols.com); Eric D. Schwartz (eschwartz@morrisnichols.com); Andrew R. Remming (aremming@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Jonathan M. Weyand (jweyand@morrisnichols.com); Luke Brzozowski (lbrzozowski@morrisnichols.com); (ii) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Benjamin A. Hackman (benjamin.a.hackman@usdoj.gov); (iii) counsel to any official committee of unsecured creditors appointed in the case (the “Committee”); and (iv) counsel to PM08-B: Goodwin Procter LLP, 620 Eighth Avenue, New York, NY 10018, Attn: Kizzy L. Jarashow (kjarashow@goodwinlaw.com); Barry Z. Bazian (bbazian@goodwinlaw.com); Liza L. Burton (lburton@goodwinlaw.com), and Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801, Attn: L. Katherine Good (kgood@potteranderson.com).

Sale Notice and Related Relief

18. The Sale Notice, substantially in the form attached hereto as **Exhibit 4**, is hereby approved. Within three (3) days of the entry of this Order, the Debtor shall cause the Sale Notice to be served upon: (a) the United States Trustee for the District of Delaware; (b) the creditors listed on the Debtor’s consolidated list of twenty (20) largest unsecured creditors, as filed with the Debtor’s chapter 11 petition, or any official committee appointed in the Debtor’s case; (c) all parties asserting a security interest in the Purchased Assets to the extent any such interest is

reasonably known to the Debtor; (d) applicable federal, state, county and city tax and regulatory authorities; (e) all entities known to have expressed a written interest in a transaction with respect to the Purchased Assets or that have been identified by the Debtor or its advisors as a potential Buyer of the Purchased Assets; (f) local, state and federal authorities and agencies that have issued licenses or permits to the Debtor with respect to the operation and use of the Purchased Assets; (g) each counterparty to the Debtor's Contracts and Leases; and (h) all parties requesting notice pursuant to Bankruptcy Rule 2002.

Assignment Procedures

19. The procedures set forth below regarding the proposed assumption and assignment of certain Contracts and Leases that may be designated to be assumed by the Debtor pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or the Successful Bidder selected at the Auction, if any) pursuant to section 365(f) of the Bankruptcy Code (as defined in the Stalking Horse APA, collectively, the "Assigned Contracts and Leases") in connection with the sale of the Purchased Assets are hereby approved (the "Assignment Procedures").

20. These Assignment Procedures, as may be modified or supplemented by the Sale Order, shall govern the assumption and assignment of all Assigned Contracts and Leases:

- a. **Cure Notice.** On or before the date that is three (3) business days after entry of the Bidding Procedures Order, the Debtor shall file with the Court a notice of the proposed assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the "Cure Notice"). The Debtor will serve the Cure Notice via first class mail on all non-Debtor counterparties to Contracts and Leases, and their respective known counsel, and provide a copy of same to the Stalking Horse Bidder. The Cure Notice shall inform each recipient that its respective Contract or Lease may be assumed and assigned to the Stalking Horse Bidder, and the timing and procedures relating to such assumption and assignment, and, to the extent practicable (i) the title of the Contract or Lease, (ii) the name of

the counterparty to the Contract or Lease, (iii) the Debtor's good faith estimates of the amounts required to cure all defaults in connection with such Contract or Lease (the "Cure Amount"), and (iv) the deadline by which any such Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure amount, and the procedures relating thereto; provided, however, that service of a Cure Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease. If the Debtor identifies additional Contracts or Leases that might be assumed by the Debtor and assigned to the Successful Bidder, the Debtor will promptly send a supplemental Cure Notice to the applicable counterparties to such Contract or Lease.

- b. **Adequate Assurance.** The Debtor shall promptly provide, upon a counterparty's request to the Debtor's counsel, adequate assurance information, which shall include, by evidence of the Successful Bidder's capacity to consummate the Sale with cash on hand, unconditional committed financing from a reputable financing institution, documented to the satisfaction of the Debtor in consultation with the Consultation Parties, to any counterparty (and counsel, if known) to any Contract that may be assumed by the applicable Qualified Bidder, including the Stalking Horse Bidder.
- c. **Objections.** Objections, if any, to the proposed assumption and assignment of any Contract or Lease or to the Cure Amount proposed with respect thereto must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any other orders of the Court; (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 Court and served so as to be actually received by the Sale Objection Deadline.

Promptly following the Debtor's selection of the Successful Bidder and the Back-Up Bidder, if any, at the conclusion of the Auction, the Debtor shall announce the Successful Bidder and the Back-Up Bidder, if any, and shall file with the Court a notice of the Successful Bidder and the Back-Up Bidder, if any. If and only if the Stalking Horse Bidder is not the Successful Bidder for the Purchased Assets, counterparties to the Debtor's Contracts and Leases shall have until Monday, April 7, 2025, at 4:00 p.m. (ET) to object to the assumption and assignment of a Contract or Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

- d. **Dispute Resolution.** Any objection to the proposed assumption and assignment or related Cure Amount of a Contract or Lease in connection with the proposed Sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing. To the extent any such objection is resolved or determined unfavorably to the Debtor, the Debtor may, subject to the terms of an agreement with the Successful Bidder (including the Stalking Horse APA), file a notice rejecting the applicable Contract or Lease after such determination.
- e. **Post-Closing Assumption and Assignment.** To the extent the Debtor seeks to assume and assign a Contract or Lease after the closing of the Sale, and subject to the terms and conditions set forth in the Successful Bidder Purchase Agreement, the Successful Bidder shall have the right, which right may be exercised at any time and from time to time, to provide written notice to the Debtor of the Successful Bidder's election to require the Debtor to assume the Contract(s) or Lease(s) identified in the subject Assumption Notice(s) and assign same to the Successful Bidder's designee.

In the case of any Contracts and Leases that the Debtor seeks to assume and assign after the Closing Date pursuant to the Stalking Horse APA (or the asset purchase agreement of the Successful Bidder), within three (3) business days following receipt of a notification by the Successful Bidder that a Contract or Lease is designated for assumption and assignment, the Debtor shall file with the Court a written notice of the Debtor's intent to assume and assign such Contract or Lease (an "Assumption Notice"), substantially in the form attached hereto as **Exhibit 3** to the Bidding Procedures Order. The Debtor shall serve such Assumption Notice via CM/ECF, electronic mail (if available), and first-class mail on each of the following parties (the "Assumption Notice Parties"):

(i) each counterparty to any Contract or Lease (and their known counsel) to be assumed or assigned by the Debtor, (ii) the United States Trustee for the District of Delaware, (iii) counsel to any official committee appointed in the Debtor's case, and (iv) counsel to the Stalking Horse Bidder or other Successful Bidder, as applicable.

The Assumption Notice shall set forth the following information, to the best of the Debtor's knowledge: (i) if the Contract relates to a Lease, then the street address of the real property that is the subject of such Lease that the Debtor is assuming and assigning or, in all other cases, a description of the Contract that the Debtor is assuming and assigning, (ii) the name and address of the affected counterparties or landlords (and their known counsel), (iii) a description of the deadlines and procedures for filing objections, if so permitted pursuant to the Assignment Procedures set forth herein, to the Assumption Notice (as set forth below), and (iv) any proposed cure amounts that arise solely following the Closing and have not otherwise been paid in the ordinary course, if any. The assumption and assignment of

each such Contract or Lease shall be effective as of the date of the applicable Assumption Notice without any further order of the Court, with objections to the proposed cure amount, if any, to be resolved thereafter as set forth below.

A party in interest may object to an Assumption Notice solely with respect to the proposed cure amount contained therein and only to the extent such objection could not have been raised prior to the Sale Objection Deadline. Any such objection must be in writing and filed and served so that such objection is filed with this Court and actually received by the Debtor and the Assumption Notice Parties no later than seven (7) days after the date the Debtor served the applicable Assumption Notice.

If no permitted objection is timely filed and served with respect to the Assumption Notice, any non-Debtor party to such Contract or Lease shall be deemed to have consented to the cure amount set forth in such Assumption Notice. If a permitted objection is timely filed and served on the Assumption Notice Parties in the manner specified above, unless the parties agree otherwise in writing, a hearing will be scheduled to consider that objection.

21. Any party who fails to timely file an objection to its scheduled cure amount listed on the Cure Notice or to the assumption and assignment of a Contract or Lease (a) shall be forever barred, estopped and enjoined from objecting thereto, including (i) making any demands for additional cure amounts or monetary compensation on account of any alleged defaults for the period prior to the applicable objection deadline against the Debtor, its estate or the Contract Party or the Stalking Horse Bidder or other Successful Bidder selected at the Auction, if any, with respect to any such Contract or Lease and (ii) asserting that the Contract Party or the Successful Bidder has not provided adequate assurance of future performance as of the date of the Sale Order; (b) shall be deemed to consent to (i) the sale of the Purchased Assets as approved by the Sale Order and (ii) the assumption and assignment of the Contracts and Leases; and (c) shall be forever barred and estopped from asserting or claiming against the Debtor or the assignee of the relevant Contract or Lease that any conditions to assumption and assignment of such Contract or Lease must be satisfied (pursuant to section 365(b)(1) of the Bankruptcy Code or otherwise).

22. The proposed assumption and assignment of the Assigned Contracts and Leases and the Auction shall be conducted solely in accordance with the provisions of this Order, the Bidding Procedures and the Assignment Procedures, as applicable.

23. Except as otherwise provided herein and in the Bidding Procedures, Local Rule 6004-1(c)(ii) is waived.

24. Nothing in this Order shall be construed to modify the requirements and provisions of sections 365(b), 365(d)(3), 365(d)(4) or 365(f) of the Bankruptcy Code, or to determine the effective date of rejection for any Contract or Lease which the Debtor may seek to reject.

Other Relief Granted

25. The Debtor is authorized to execute and deliver all instruments and documents and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

26. The Stalking Horse Bidder has standing to enforce the terms of this Order and the Debtor's pre-closing obligations under the Stalking Horse APA, and in each case, the automatic stay set forth in section 362 of the Bankruptcy Code is waived to the extent necessary to permit enforcement thereof.

27. The requirements set forth in Local Rule 9013-1 are satisfied by the contents of the Motion.

28. The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

29. To the extent any provisions of this Order shall be inconsistent with the Motion, the terms of this Order shall control.

30. This Order shall be immediately effective and enforceable upon entry hereof.

31. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

EXHIBIT 1

Bidding Procedures

BIDDING PROCEDURES

On February [●], 2025, Omega Therapeutics, Inc., debtor and debtor in possession (collectively, the “Debtor”) in the chapter 11 case (the “Case”) pending in the United States Bankruptcy Court for the District of Delaware (“Court”) and administered under Case No. 25-10211 (BLS), filed a motion [D.I. [___]] (the “Sale Motion”), seeking, among other things, authorization for the Debtor to perform its obligations under that certain Asset Purchase Agreement (together with all exhibits thereto, the “Stalking Horse APA”)¹ entered into by and among the Debtor and Pioneering Medicines 08-B, Inc. (the “Stalking Horse Bidder”), substantially in the form attached to the Sale Motion as Exhibit B. As described in the Sale Motion, the Stalking Horse APA contemplates, pursuant to the terms and subject to the conditions contained therein, the sale of the Purchased Assets in exchange for: (i) a credit bid for all DIP Obligations and Prepetition Secured Obligations that have not been discharged with the Roll-Up for the DIP Collateral (as defined in the Stalking Horse APA) in an aggregate amount of not less than \$11,461,086.00; (ii) the assumption of assumed liabilities as set forth in the Stalking Horse APA to be paid in accordance with the terms of the Stalking Horse APA; and (iii) the payment of Cure Amounts (as defined in the Stalking Horse APA).

The Stalking Horse APA provides for payment of bid protections in the form of a reimbursement of the Stalking Horse Bidder’s actual, reasonable, documented out-of-pocket expenses up to an amount not to exceed \$300,000.00, and together with all other bid protections provided under the Stalking Horse APA (the “Bid Protections”), in each case, on the terms and conditions set forth in the Stalking Horse APA.

On [●], 2025, the Court entered the *Order (A) Authorizing and Approving Bidding Procedures, (B) Authorizing and Approving the Debtor’s Entry Into the Stalking Horse APA, (C) Approving Notice Procedures, (D) Scheduling a Sale Hearing and (E) Approving Procedures for Assumption and Assignment and Determining Cure Amounts* [D.I. [___]] (the “Bidding Procedures Order”), which, among other things, (i) authorized the Debtor to perform its pre-closing obligations under the Stalking Horse APA and (ii) approved these bidding procedures set forth herein (the “Bidding Procedures”) governing the submission of competing proposals to purchase the Purchased Assets pursuant to section 363 of the Bankruptcy Code. The sale of the Purchased Assets will be implemented pursuant to the terms and conditions of the Bidding Procedures Order and the Stalking Horse APA, as the same may be amended pursuant to the terms thereof, subject to the Debtor’s selection in its reasonable discretion, after consultation with any official committee appointed in the Debtor’s case (the “Committee”), of a higher or otherwise better bid as the Successful Bid (as defined below) in accordance with these Bidding Procedures.

Notice Parties

The following are the notice parties for the purpose of these Bidding Procedures (collectively, the “Notice Parties”): (i) proposed counsel to the Debtor, Morris, Nichols, Arsht & Tunnell, 1201 N. Market Street, 16th Floor, Wilmington, Delaware 19801, Attn: Derek C. Abbott (dabbott@morrisnichols.com); Eric D. Schwartz (eschwartz@morrisnichols.com); Andrew R.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Stalking Horse APA.

Remming (aremming@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Jonathan M. Weyand (jweyand@morrisnichols.com); Luke Brzozowski (lbrzozowski@morrisnichols.com); (ii) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Benjamin A. Hackman (benjamin.a.hackman@usdoj.gov); (iii) counsel to any official committee of unsecured creditors appointed in the case (the “Committee”); and (iv) proposed investment banker to the Debtor, Portage Point (sbremer@pppllc.com and llansio@pppllc.com).

Participation Requirements

To participate in the formal bidding process or otherwise be considered for any purpose hereunder, a person (other than the Stalking Horse Bidder) interested in submitting a bid (an “Interested Party”) must deliver to Portage Point (sbremer@pppllc.com and llansio@pppllc.com), on behalf of the Debtor, the following documents (the “Preliminary Bid Documents”):

- i. an executed confidentiality agreement on terms reasonably acceptable to the Debtor (each, a “Confidentiality Agreement”);
- ii. a statement and other factual support demonstrating to the Debtor’s satisfaction in the exercise of its reasonable business judgment that the Interested Party has a bona fide interest in purchasing the Purchased Assets; and
- iii. preliminary verbal or written proof by the Interested Party of its financial capacity to close a proposed transaction at the Purchase Price (as defined below), which may include (a) current unaudited or verified financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), or (b) sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any executory contracts and unexpired leases to be assumed by the Debtor and assigned to the Potential Bidder in connection with the proposed transaction.

Due Diligence

An Interested Party must deliver the Preliminary Bid Documents to Portage Point (sbremer@pppllc.com and llansio@pppllc.com) to be eligible to receive due diligence information concerning the Debtor and its assets. After the Debtor determines, in its reasonable discretion that an Interested Party has satisfied the Preliminary Bid Document Requirements (such Interested Party, a “Potential Bidder”), the Debtor will provide to each such Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, provided that if any Potential Bidder is (or is affiliated with) a competitor of the Debtor, the Debtor will not

be required to disclose to such Potential Bidder any trade secrets, proprietary information, or other commercially sensitive information unless, under the Debtor's business judgment, the Confidentiality Agreement executed by such Potential Bidder (i) sufficiently protects the Debtor's estate, and (ii) contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used by such Potential Bidder or its Affiliates for an improper purpose or to gain an unfair competitive advantage. Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtor or its advisors regarding such Potential Bidder and its contemplated transaction. Access may be terminated by the Debtor in its reasonable discretion at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, the Potential Bidder breaches any obligations under its confidentiality agreement, or the Debtor becomes aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtor may restrict or limit access of a Potential Bidder to the Data Room if the Debtor determines, based on its reasonable business judgment that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder. The Potential Bidder shall return or destroy any non-public information the Debtor or its advisors provided to the Potential Bidder in accordance with the terms of the confidentiality agreement executed by the Debtor and the Potential Bidder.

The Debtor will try to accommodate all reasonable requests from Potential Bidders for additional information and due diligence access. All due diligence requests shall be directed to Lisa K. Lansio (llansio@pppllc.com).

Bid Requirements

To be eligible to participate in the Auction, each Potential Bidder must submit a proposal to purchase the Purchased Assets (a "Bid") to the Notice Parties by Tuesday, April 1, 2025 at 5:00 p.m. (ET) (the "Bid Deadline") which must:

- i. state that the applicable Potential Bidder offers to purchase and/or otherwise sponsor, finance (including through the issuance of debt in connection with such bid) some or all of the Purchased Assets pursuant to a transaction that is no less favorable to the Debtor's estate as the Debtor may reasonably determine, following consultation with the Consultation Parties², than the transactions contemplated in the Stalking Horse APA;
- ii. be accompanied by a deposit (each, a "Good Faith Deposit") in the form of a wire transfer or certified check or such other form acceptable to the Debtor

² "Consultation Parties" means the DIP Lender and any statutory committee appointed in this case; provided, that to the extent that any Consultation Party, including any member of any statutory committee, submits a bid, including the Stalking Horse Bid or an alternative credit bid or otherwise, for any Purchased Assets in connection with these Bidding Procedures, or is a participant in any active or prospective Bid with respect to any Purchased Asset(s), such applicable Consultation Party shall immediately no longer be a Consultation Party unless and until such party unequivocally revokes its Bid and waives its right to continue in the bidding procedures. For the avoidance of doubt, the DIP Lender/Stalking Horse Bidder will not be a Consultation Party unless and until it unequivocally revokes the Stalking Horse Bid and waives its right to continue in the bidding process.

in its sole discretion, payable to the order of the Debtor, in an amount equal to 10% of the cash portion of the Purchase Price being bid;

- iii. specify the amount of cash or other consideration offered by the Potential Bidder (the “Purchase Price”), which Purchase Price must include an amount of cash consideration at closing that exceeds the aggregate sum of the following: (a) the aggregate consideration set forth in the Stalking Horse APA, including the amount of the Credit Bid and the assumption of the Assumed Liabilities and the Cure Amounts; (b) the Bid Protections; and (c) an initial minimum bid increment of \$500,000; provided that, if a bid includes forms of consideration other than cash, the bidder shall include an analysis or description of the value of such non-cash components, including any supporting documentation, to assist the Debtor and the Consultation Parties in evaluating the bid;
- iv. be irrevocable by the Potential Bidder until the selection of the Successful Bid in accordance with the terms of these Bidding Procedures; provided that, other than a Bid submitted by the Stalking Horse Bidder, if such Potential Bidder is selected as the Successful Bidder or Back-Up Bidder and is required to be a Back-Up Bidder hereunder, its Bid must remain irrevocable until the Debtor’s consummation of a sale with the Successful Bidder;
- v. include an executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction at the Purchase Price (or in the case of the Stalking Horse Bidder, at the purchase price set forth in the Stalking Horse APA) (the “Transaction Documents”), which Transaction Documents must include a copy of the proposed asset purchase agreement marked against the Stalking Horse APA to show all changes requested by the Potential Bidder including, but not limited to, treatment of any assumed liabilities;
- vi. include a list which specifies in detail which of the Debtor’s unexpired leases and executory contracts are to be assumed by the Debtor and assigned to the Potential Bidder in connection with the consummation of the proposed transaction;
- vii. include a proposed sale order and be marked against the proposed form of Sale Order;
- viii. provide a commitment to close no later than Monday, April 21, 2025;
- ix. not be conditioned on unperformed due diligence, obtaining financing or any internal approval or otherwise be subject to contingencies more burdensome than those in the Stalking Horse APA;

- x. include (a) a description of all governmental, licensing, regulatory or other filings, approvals or consents that are required to be made or obtained to close the proposed transaction, together with evidence of the ability to make or obtain such filings, consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the making, obtainment or effectiveness of any such filings, consents or approvals and (b) an estimated timeframe for making and/or obtaining any such required governmental, licensing, regulatory or other filings, approvals or consents;
- xi. contain written evidence of a commitment for financing or other evidence of the ability to consummate a proposed transaction at the Purchase Price (including sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any executory contracts and unexpired leases to be assumed by the Debtor and assigned to the Potential Bidder in connection with the proposed transaction), satisfactory to the Debtor in its reasonable discretion with appropriate contact information for such financing sources;
- xii. contain written evidence satisfactory to the Debtor in its reasonable discretion of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and consummation of such Bid and the transaction(s) contemplated therein and any Overbid(s) (as defined below), and related Transaction Documents;
- xiii. not request or entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment;
- xiv. fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid), participating in or benefiting from (including through license or similar arrangement with respect to the assets to be acquired in connection with such Bid) such Bid (a "Participating Party"), and the complete terms of any such sponsorship, participation, financing or benefit;
- xv. state that the Potential Bidder agrees to serve as a backup bidder if such bidder's Qualified Bid is selected at the Auction as the next highest or next best bid after the Successful Bid;
- xvi. state that the bid constitutes a good faith, bona fide offer to effectuate the proposed transaction and is not subject to or conditioned on any further due diligence, and is irrevocable (a) until the selection of the Successful Bid in

accordance with these Bidding Procedures; or (b) if the bid is selected as a Successful Bid or as a Backup Bid;

- xvii. expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for any of the Purchased Assets and/or otherwise participating in the Auction or the Sale process;
- xviii. state whether the Potential Bidder intends to offer future employment to any of the Debtor's employees;
- xix. contain such other information as may be reasonably requested by the Debtor;
- xx. include a written acknowledgement by such Potential Bidder that it agrees to all of the terms for sale set forth in these Bidding Procedures;
- xxi. include an agreement to provide any other information reasonably requested by the Debtor; and
- xxii. be received by the Bid Deadline.

Designation as Qualified Bidder

A qualified bidder ("Qualified Bidder") is a Potential Bidder that, in the Debtor's reasonable determination, following consultation with the Consultation Parties, (i) has timely submitted a Bid that satisfies each of the requirements listed above in the section entitled "Bid Requirements" and (ii) is able to consummate the proposed transaction within the required timeframe if selected as the Successful Bidder (such Bid submitted by a Qualified Bidder, a "Qualified Bid"); provided that the Debtor reserves the right to work with any Potential Bidder to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. Within one (1) business day after a Potential Bidder delivers all of the documents described above, the Debtor will determine in its reasonable discretion, following consultation with the Consultation Parties, whether such Potential Bidder is a Qualified Bidder, and notify the Potential Bidder of such determination. For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse APA is a Qualified Bid, and (iii) the Stalking Horse Bidder is authorized to submit any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

A Qualified Bidder shall not (without the consent of the Debtor), modify, amend, or withdraw its Qualified Bid, unless for the purposes of increasing the purchase price or otherwise improving the terms of the Qualified Bid, as determined by the Debtor in its reasonable business judgment.

“As Is, Where Is”

Any sale or transfer of the Purchased Assets will be on an “as is, where is” basis and without representations or warranties of any kind by the Debtor, its agents or the Debtor’s chapter 11 estate, except and solely to the extent expressly set forth in a final purchase agreement approved by the Court as the Successful Bid. Each Qualified Bidder will be required to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Debtor’s assets that are the subject of the Auction prior to making its Bid and that it has relied solely upon its own independent review and investigation in making its Bid. Except as otherwise provided in a final purchase agreement approved by the Court as the Successful Bid, all of the Debtor’s right, title and interest in the Purchased Assets will be sold or transferred free and clear of all Liens (other than Permitted Post-Closing Liens) as proposed in the Stalking Horse APA, with any Liens (other than Permitted Post-Closing Liens) to attach to the proceeds of the sale of the Purchased Assets as provided in the proposed form of sale order attached to the Sale Motion.

Auction

Baseline Bid. No later than one (1) Business Day prior to the commencement of the Auction, the Debtor will (i) notify all Qualified Bidders and Notice Parties in writing of the highest or otherwise best Qualified Bid, as determined by the Debtor in its reasonable discretion, following consultation with the Consultation Parties (the “Baseline Bid”), and (ii) provide all Qualified Bidders and Notice Parties with complete copies of all Transaction Documents and all other bid materials submitted by each other Qualified Bidder, including the Baseline Bid, subject to exclusion of any confidential financial information as determined by the Debtor in its reasonable discretion or which has been so designated by the applicable Qualified Bidder. The Debtor’s determination of which Qualified Bid constitutes the Baseline Bid shall take into account factors such as the projected percentage recovery to general unsecured creditors pursuant to such Qualified Bid and the certainty of such recovery, whether all administrative, priority and secured claims will be paid in full under such Qualified Bid and any other factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the estate. No later than the day prior to the commencement of the Auction, each Qualified Bidder that has timely submitted a Qualified Bid must inform the Debtor whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder’s Qualified Bid will nevertheless remain fully enforceable against such Qualified Bidder; provided further that the Stalking Horse Bidder will not be required to, but may, attend and participate at the Auction.

If no Qualified Bids (other than the Stalking Horse Bid) are received by the Bid Deadline, the Auction shall be canceled, and the Debtor will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Debtor’s claims and noticing agent’s website, a notice containing the following information, as applicable: (i) a statement that the Auction for the Purchased Assets has been canceled; (ii) a declaration that the Stalking Horse Bidder is deemed the Successful Bidder and the Stalking Horse APA is the Successful Bid; and (iii) the date, time, and location of the Sale Hearing.

Auction Date and Location. The Auction will commence on or before Thursday, April 3, 2025, at 10:00 a.m. (Prevailing Eastern Time) at the offices of **Morris Nichols Arsht & Tunnell, LLP, 1201 N. Market Street, Wilmington, DE 19801**, or on such other date and/or at such other location as determined by the Debtor. The Debtor may determine that the Auction will be held virtually.

Participation Requirements. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. The authorized representatives of each of the Qualified Bidders (including the Stalking Horse Bidder) and the Debtor will be permitted to attend the Auction. In addition, pursuant to Local Rule 6004-1, all creditors of the Debtor who have not submitted Bids may attend the Auction as observers, provided that they send an email to the undersigned counsel indicating that they intend to attend the Auction no less than one (1) Business Day prior to the Auction, provided further that the Debtor's right to object on an emergency basis to any such creditor's proposed attendance at the Auction is reserved.

Auction Procedures. The Debtor and its professionals will direct and preside over the Auction. At the start of the Auction, the Debtor will describe the terms of the Baseline Bid. All Bids made thereafter must be Overbids (as defined below) and will be made and received on an open basis, and all material terms of each Bid will be fully disclosed to all other Qualified Bidders. The Debtor will maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, the Successful Bid and the Back-Up Bid. Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of the Purchased Assets. The Debtor, in its reasonable discretion, reserve the right to conduct the Auction in a manner designed to maximize value based upon the nature and extent of the Qualified Bids received; provided that, the Debtor may, in its sole discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of a Qualified Bidder or otherwise attend the Auction.

During the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least \$100,000 (each, an "Overbid"). The Debtor will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with these Bidding Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid. Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or other non-cash consideration acceptable to the Debtor in accordance with these Bidding Procedures. During the Auction, the Debtor may, in its reasonable discretion, announce increases or reductions to Minimum Overbids at any time. To the extent that an Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions, including the addition or removal of Purchased Assets or Assumed Contracts, in the applicable Transaction Documents or the Stalking Horse APA, the Debtor will provide notice to each participant of the value ascribed by the Debtor to any such added, deleted, or modified provision or provisions, or added or removed Purchased Assets or Assumed Contracts, with such value being determined by the Debtor in its reasonable discretion following consultation with the Consultation Parties.

Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtor accepts a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid (as defined below). To the extent not previously provided (which will be determined by the Debtor), a Qualified Bidder submitting an Overbid must submit at the Debtor's request, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid.

Selection of Successful Bid

At the conclusion of the Auction, the Debtor, in the exercise of its reasonable business judgment will select (i) the highest or otherwise best bid submitted by a Qualified Bidder during the Auction that the Debtor believes is most beneficial to the Debtor (provided that any such bid (other than a bid of the Stalking Horse Bidder) must include cash in an amount not less than all DIP Obligations (other than contingent indemnity obligations for which no claim has been made or threatened) plus the Bid Protections plus the minimum overbid increment) (the "Successful Bid"), and (ii) at the Debtor's discretion, the next highest or otherwise best bid after the Successful Bid (the "Back-Up Bid"). In selecting the Successful Bid and the Back-Up Bid, if any, the Debtor shall take into account the projected percentage recovery to general unsecured creditors and the certainty of such recovery and whether all administrative, priority and secured claims will be paid in full and may also consider, among other things: (i) any provisions or conditions that may delay closing of the contemplated transaction and the cost to the Debtor caused by such delay; (ii) the liabilities being assumed; (iii) the likelihood of the Qualified Bidder's ability to close its proposed transaction and the timing thereof; (iv) the likely employment of employees over the long term (v) the expected net benefit of the transaction to the Debtor's estate and (vi) any other factors the Debtor may reasonably deem relevant. The Qualified Bidder that submits the Successful Bid will be deemed the "Successful Bidder," and the purchase agreement with respect to such Successful Bid will be deemed the "Successful Bidder Purchase Agreement." The Qualified Bidder that submits the Back-Up Bid, if any, will be deemed the "Back-Up Bidder." The Successful Bidder and Back-Up Bidder (except for the Stalking Horse Bidder), following the completion of the Auction, must increase their Good Faith Deposits so that they equal 10% of the cash portion of such Successful Bid or Back-Up Bid, as applicable.

The Auction will close when the Debtor announces that the Auction has concluded and a Successful Bid and, to the extent the Debtor determines, a Back-Up Bid, have been selected. Notwithstanding anything herein to the contrary, the Debtor is authorized, but not required, to select a Back-Up Bidder and a Back-Up Bid. For the avoidance of doubt, the Debtor will not consider or support any bid for any of the Purchased Assets (whether or not such bid is made by a Qualified Bidder) received after the close of the Auction or, with respect to bids by a Qualified Bidder that is not the Stalking Horse Bidder, that does not include cash in an amount sufficient to pay in full all DIP Obligations (other than contingent indemnity obligations for which no claim has been made or threatened) plus the Bid Protections plus the minimum overbid increment.

The Back-Up Bid, if any, will remain open and binding on the Back-Up Bidder until consummation of the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Successful Bid within the time set forth therein, the Debtor will be authorized, but not required, to select the Back-Up Bidder, if any, as the new Successful Bidder, and shall proceed to consummate the Successful Bid of the new Successful Bidder.

Within one (1) Business Day after the conclusion of the Auction, the Debtor will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Debtor's claims and noticing agent's website, a notice setting forth the results of the Auction (the "Notice of Auction Results"), which will (i) identify each Successful Bidder and the Backup Bidder; (ii) include a copy of each Successful Bid and the Backup Bid or a summary of the material terms of such bids, or provide instructions for accessing each Successful Bid and the Backup Bid free of charge from the Debtor's claims and noticing agent's website; and (iii) set forth the deadline to object solely with respect to the conduct of the Auction and/or the Successful Bidder or Backup Bidder (each such objection, a "Supplemental Sale Objection"); and (iv) the date, time, and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

Implementation of the Sale

The hearing to authorize the sale of the Purchased Assets to the Successful Bidder pursuant to the Successful Bid (the "Sale Hearing") will be held before the Court on Thursday, April 10, 2025, at __:__ .m. (Prevailing Eastern Time). The Sale Hearing may be adjourned or rescheduled by the Debtor to a time and date consistent with the Court's calendar, as set forth in notice on the docket of the Case, a notice of agenda or stated orally on the record at a hearing before the Court. Upon the Court's approval of the Successful Bid, the Successful Bid will be deemed accepted by the Debtor, and the Debtor will be bound to the terms of that Successful Bid with no further opportunity for an auction or other process.

If the Successful Bidder or the Back-Up Bidder (if the Successful Bidder fails to consummate the proposed transaction) fails to enter into an asset purchase agreement as promptly as practicable or consummate the proposed transaction consistent with the Successful Bid or Back-Up Bid (if applicable), because of a breach or failure to perform on the part of the Successful Bidder or Back-Up Bidder (if applicable), all parties in interest reserve the right to seek all available damages from the defaulting Successful Bidder or Back-Up Bidder (if applicable), including specific performance and retention of the Good Faith Deposit.

Consultation by the Debtor

Throughout the Sale Process, the Debtor and its advisors will consult with the Consultation Parties as provided in these Bidding Procedures, or as is otherwise necessary or appropriate, as determined in the Debtor's business judgment.

Consent to Jurisdiction as Condition to Bidding

All Potential Bidders and Qualified Bidders (including the Stalking Horse Bidder, Successful Bidder, and Backup Bidder) shall be deemed to have (i) agreed that all proceedings in the Court related to these Bidding Procedures, the Auction, any other relief requested in the Motion or granted pursuant to the Bidding Procedures Order, or the construction or enforcement of any agreement or any other document directly relating to the sale transaction are core proceedings as described in 28 U.S.C. § 157; (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the Auction, or the construction or enforcement of any agreement or any other document directly relating to the sale transaction; and (iii) consented to the entry of a final order or judgment by the Court in connection with any disputes relating to these Bidding Procedures, the Auction, or the construction or enforcement of any agreement or any other document relating directly to the sale transaction, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

Return of Good Faith Deposit

All Good Faith Deposits will be held by the Debtor in a non-interest-bearing escrow or trust account. Good Faith Deposits of Qualified Bidders, other than the Successful Bidder and the Back-Up Bidder, if any, will be returned to the unsuccessful bidders within seven (7) days after selection of the Successful Bidder and Back-Up Bidder, if any, in accordance with these Bidding Procedures. The Successful Bidder's Good Faith Deposit will be applied to the Purchase Price of the Successful Bid at closing, and the Debtor will be entitled to retain such Good Faith Deposit as part of their damages if the Successful Bidder fails to meet its obligations to close the transaction contemplated by the Successful Bid. The Good Faith Deposit of the Back-Up Bidder, if any, will be returned to the Back-Up Bidder, if any, within seven (7) days after the consummation of the sale with the Successful Bidder.

Reservation of Rights

The Debtor reserves the right in its reasonable discretion and subject to the exercise of its business judgment, to alter or modify any Auction rules or procedures, to waive terms and conditions set forth herein with respect to all potential bidders, extend the deadlines set forth herein, alter the assumptions set forth herein, and/or to terminate discussions with any and all prospective acquirers and investors at any time and without specifying the reasons therefor, in each case to the extent not materially inconsistent with these Bidding Procedures, the Bidding Procedures Order, the DIP Order and the Stalking Horse APA; provided that the Debtor shall only be permitted to modify or amend the terms of the Stalking Horse APA with the consent of the Stalking Horse Bidder.

EXHIBIT 2

Cure Notice

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

In re:

OMEGA THERAPEUTICS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10211 (BLS)

**NOTICE OF (I) POSSIBLE TREATMENT OF CONTRACTS AND LEASES, (II)
FIXING OF CURE AMOUNTS, AND (III) DEADLINE TO OBJECT THERETO**

PLEASE TAKE NOTICE that, on February [●], 2025, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Debtor’s Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtor’s Assets; (B) Approving the Debtor’s Entry Into Stalking Horse APA and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places In Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtor’s Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief [D.I. ____] (the “Sale Motion”)², with the United States Bankruptcy Court for the District of Delaware (the “Court”), seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a)*

¹ The Debtor’s federal tax identification number is: 81-3247585. The mailing address for the Debtor is 140 First Street, Suite 501, Cambridge, MA 02141.

² Capitalized terms not defined herein are defined in the Bidding Procedures or Sale Motion.

the sale (the “Sale”) of certain assets (the “Purchased Assets”) free and clear of all liens, claims, encumbrances, and other interests, with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds, to Pioneering Medicines 08-B, Inc. (the “Stalking Horse Bidder”), except as set forth in the Stalking Horse APA and subject to higher or otherwise better offers; and (b) certain procedures for the assumption and assignment of executory contracts (the “Contracts”) and unexpired leases (the “Leases”) in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, on [●], 2025, the Court entered an order [D.I._____] (the “Bidding Procedures Order”), granting certain of the relief sought in the Sale Motion, including, among other things, approving: (a) the bid procedures (the “Bidding Procedures”) for the Sale of the Purchased Assets; and (b) procedures for the designation of the assumption and assignment of the Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, a hearing will be held before the Honorable Judge Brendan L. Shannon, United States Bankruptcy Judge, on **Thursday, April 10, 2025, at __:__ .m. (Prevailing Eastern Time)**, in Courtroom #1 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, Delaware 19801 to consider approval of the Sale (the “Sale Hearing”). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing agenda or other notice filed on the docket of this chapter 11 case.

PLEASE TAKE FURTHER NOTICE that you are receiving this notice (the “Cure Notice”) because you or one of your affiliates may be a counterparty to one or more

of the Contracts and Leases with the Debtor as set forth on Exhibit A attached hereto (the “Contract and Lease Schedule”).³ If the Court enters the Sale Order, the Debtor may assume and assign to the Stalking Horse Bidder (or to another Successful Bidder selected at the Auction, if any) or reject the Contract and/or Lease listed on the Contract and Lease Schedule, to which you are a counterparty, either as of the Closing Date or a later date pursuant to the Stalking Horse APA or the Successful Bidder Purchase Agreement, as applicable.

PLEASE TAKE FURTHER NOTICE that the Debtor has determined that the cure amounts necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Contracts and Leases (the “Cure Amounts”) are in the total amount as set forth on the Contract and Lease Schedule attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that if you disagree with the proposed Cure Amounts, object to the ability of the Debtor to provide adequate assurance of future performance with respect to the Contract or Lease, or otherwise object to the potential assumption and assignment of the Contract or Lease to the Stalking Horse Bidder or other Successful Bidder, as applicable, you must file with the Court and serve an objection (an “Objection”) on the following parties so as to be actually received before **4:00 p.m. (prevailing Eastern Time) on Thursday, April 3, 2025** (the “Objection Deadline”): (a) proposed counsel to the Debtor, Morris, Nichols, Arsht & Tunnell, 1201 N. Market Street, 16th Floor, Wilmington, Delaware 19801, Attn: Derek C. Abbott (dabbott@morrisnichols.com); Eric D. Schwartz (eschwartz@morrisnichols.com); Andrew R. Remming (aremming@morrisnichols.com); Daniel

³ This Cure Notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This Cure Notice is not an admission by the Debtor that such contract or lease is executory or unexpired.

B. Butz (dbutz@morrisnichols.com); Jonathan M. Weyand (jweyand@morrisnichols.com); Luke Brzozowski (lbrzozowski@morrisnichols.com); (b) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Benjamin A. Hackman (benjamin.a.hackman@usdoj.gov); (c) counsel to any official committee of unsecured creditors appointed in the case (the “Committee”); and (d) counsel to Pioneering Medicines 08-B, Inc.: Goodwin Procter LLP, 620 Eighth Avenue, New York, NY 10018, Attn: Kizzy L. Jarashow (kjarashow@goodwinlaw.com); Barry Z. Bazian (bbazian@goodwinlaw.com), Liza L. Burton (lbarton@goodwinlaw.com), and Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801, Attn: L. Katherine Good (kgood@potteranderson.com). All Objections must: (a) be in writing; (b) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any orders of the Court; and (c) state with specificity the nature of the objection and, if the objection pertains to the Cure Amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof.

PLEASE TAKE FURTHER NOTICE that if and only if the Stalking Horse Bidder is **not** the Successful Bidder for the Purchased Assets, counterparties to the Contracts and Leases shall have until **Monday, April 7, 2025, at 4:00 p.m. (prevailing Eastern Time)** to object to the assumption and assignment of the Contracts and Leases **solely** on the issue of whether the Successful Bidder can provide adequate assurance of further performance as required by section 365 of the Bankruptcy Court. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance Objections must be filed by the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that any party that fails to timely file an Objection shall be deemed to have consented to the assumption and assignment of the Contract or

Lease to the Stalking Horse Bidder or Successful Bidder, as applicable, and the Cure Amounts proposed by the Debtor in this Cure Notice, and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Debtor's cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtor or its estate (except, to the extent applicable, with respect to matters arising after the Closing and that are not otherwise paid in the ordinary course).

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment or related cure of a Contract or Lease in connection with the Sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing (or at a later date as fixed by the Court) provided that any such objection may be adjourned, in full or in part, by the Debtor to a later date by listing such adjournment in a notice of agenda or other notice filed on the docket of the case and served on the affected counterparty.

PLEASE TAKE FURTHER NOTICE that the Debtor hereby reserves all rights to amend, revise or supplement any documents relating to the Sale and/or to be executed, delivered, assumed and/or performed in connection with the Sale or the Stalking Horse APA or Successful Bidder Purchase Agreement, as applicable, including the Contract and Lease Schedule.

PLEASE TAKE FURTHER NOTICE that notwithstanding anything herein, this Cure Notice shall not be deemed to be an assumption, rejection, or termination of any of the Contracts and Leases. Moreover, the Debtor explicitly reserves its rights to reject or assume any of the Contracts and Leases pursuant to section 365(a) of the Bankruptcy Code and nothing herein (a) alters in any way the prepetition nature of the Contracts and Leases or the validity, priority, or amount of any claims of counterparties to the Contracts and Leases against the Debtor that may arise under such Contracts and Leases; (b) creates a postpetition contract or agreement; or (c)

elevates to administrative expense priority any claims of counterparties to the Contracts and Leases against the Debtor that may arise under such Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion (and all exhibits thereto), the Bidding Procedures Order, the Bidding Procedures, and proposed Sale Order (and all exhibits thereto) are available for review free of charge by accessing <https://cases.ra.kroll.com/omega/>.

Dated:
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Draft

Eric D. Schwartz (No. 3134)
Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Daniel B. Butz (No. 4227)
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*Proposed Counsel to the Debtor and
Debtor in Possession*

EXHIBIT 3

Assumption Notice

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

In re:

OMEGA THERAPEUTICS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10211 (BLS)

**NOTICE OF ASSUMPTION AND ASSIGNMENT OF
UNEXPIRED LEASES AND EXECUTORY CONTRACTS**

PLEASE TAKE NOTICE that, on [●], 2025, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered the *Order (A) Approving the Sale of Substantially All of the Debtor’s Assets Free and Clear of All Liens, Interests, Claims, and Encumbrances; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Certain Related Relief* (the “Sale Order”).²

PLEASE TAKE FURTHER NOTICE that, in accordance with the terms of the Sale Order, the above-captioned debtor and debtor in possession (the “Debtor”) hereby provides this “Notice of Assumption and Assignment of Unexpired Leases and Executory Contracts” (the “Assumption Notice”) ³ of its assumption and assignment, pursuant to the Sale Order, of the unexpired leases (the “Leases”) and executory contracts (the “Contracts”) set forth on **Exhibit A** hereto effective as of the date this Assumption Notice is filed with the Bankruptcy Court. The Debtor is assuming and assigning the Leases and Contracts to [●] (the “Buyer”). As determined by the Bankruptcy Court upon entry of the Sale Order, the Buyer has the financial wherewithal to

¹ The Debtor’s federal tax identification number is: 81-3247585. The mailing address for the Debtor is 140 First Street, Suite 501, Cambridge, MA 02141.

² Capitalized terms not defined herein are defined in the Sale Order.

³ This notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This is not an admission by the Debtor that such contract or lease is executory or unexpired.

meet all future obligations under the Leases and Contracts, and demonstrated that it has the ability to comply with the requirements of adequate assurance of future performance under section 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, based on its books and records, the Debtor has identified on **Exhibit A** hereto certain Cure Amounts for the Leases and Contracts that have arisen solely following **101, 2025** (the “Closing”) and that have not otherwise been paid in the ordinary course (the “Additional Cure Amounts”).

PLEASE TAKE FURTHER NOTICE that, should you object to the Additional Cure Amounts set forth in this Assumption Notice, you must file with the Court and serve an objection (an “Objection”) on the following parties so as to be actually received before **4:00 p.m. (prevailing Eastern Time) on [●], 2025** (the “Objection Deadline”): (a) proposed counsel to the Debtor, Morris, Nichols, Arsht & Tunnell, 1201 N. Market Street, 16th Floor, Wilmington, Delaware 19801, Attn: Derek C. Abbott (dabbott@morrisnichols.com); Eric D. Schwartz (eschwartz@morrisnichols.com); Andrew R. Remming (aremming@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Jonathan M. Weyand (jweyand@morrisnichols.com); Luke Brzozowski (lbrzozowski@morrisnichols.com); (b) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Benjamin A. Hackman (benjamin.a.hackman@usdoj.gov); (c) counsel to any official committee of unsecured creditors appointed in the case (the “Committee”); and (d) counsel to Pioneering Medicines 08-B, Inc.: Goodwin Procter LLP, 620 Eighth Avenue, New York, NY 10018, Attn: Kizzy L. Jarashow (kjarashow@goodwinlaw.com); Barry Z. Bazian (bbazian@goodwinlaw.com); Liza L. Burton (lburton@goodwinlaw.com), and Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801, Attn: L.

Katherine Good (kgood@potteranderson.com). All Objections must: (a) be in writing; (b) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any other orders of the Court; and (c) state with specificity any Cure Amounts arising solely following the Closing alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Sale Order, Cure Amounts with respect to the Leases and Contracts due as of the date of the Closing under section 365(b) of the Bankruptcy Code are not subject to objection.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Sale Order, if a permitted Objection is properly filed and served in accordance with the procedures set forth above, and the Debtor, the Buyer and the objecting party cannot consensually resolve the issue(s) raised in the Objection, a hearing will be scheduled to consider that Objection.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Sale Order, if no Objection is filed and served in accordance with the procedures set forth above, any non-Debtor party to such Lease or Contract shall be deemed to have consented to the Additional Cure Amounts set forth in this Assumption Notice.

PLEASE TAKE FURTHER NOTICE that the Debtor hereby reserves all rights to amend, revise or supplement any documents relating to the Sale and/or to be executed, delivered, assumed and/or performed in connection with the Sale or the Stalking Horse APA or Successful Bidder Purchase Agreement, as applicable, including the Contract and Lease Schedule.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Order and all other documents filed in this case are available for review free of charge by accessing <https://cases.ra.kroll.com/omega/>.

Dated:
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Draft

Eric D. Schwartz (No. 3134)

Derek C. Abbott (No. 3376)

Andrew R. Remming (No. 5120)

Daniel B. Butz (No. 4227)

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*Proposed Counsel to the Debtor and
Debtor in Possession*

EXHIBIT 4

Sale Notice

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

In re:

OMEGA THERAPEUTICS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10211 (BLS)

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that, on February [●], 2025, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Debtor’s Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtor; (B) Approving the Debtor’s Entry Into the Stalking Horse APA and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling the Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places In Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtor’s Assets Free and Clear of Claims, Liens, and Encumbrances; (B) Approving the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief [D.I. ____] (the “Sale Motion”)*², with the United States Bankruptcy Court for the District of Delaware (the “Court”), seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a)

¹ The Debtor’s federal tax identification number is: 81-3247585. The mailing address for the Debtor is 140 First Street, Suite 501, Cambridge, MA 02141.

² Capitalized terms not defined herein are defined in the Bidding Procedures or Sale Motion.

the sale (the “Sale”) of certain assets (the “Purchased Assets”) free and clear of all liens, claims, encumbrances, and other interests, with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds, to Pioneering Medicines 08-B, Inc. (the “Stalking Horse Bidder”); and (b) certain procedures for the assumption and assignment of executory contracts (the “Contracts”) and unexpired leases (the “Leases”) in connection with the Sale.

PLEASE TAKE FURTHER NOTICE THAT THE DEBTOR IS PROPOSING TO SELL THE PURCHASED ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS (OTHER THAN PERMITTED POST-CLOSING LIENS). IN CONNECTION WITH THE SALE, THE STALKING HORSE BIDDER AND OTHER BUYERS WILL ALSO BE SEEKING A FINDING FROM THE COURT THAT THEY ARE NOT LIABLE UNDER THEORIES OF “SUCCESSOR LIABILITY” FOR ANY LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS ARISING BEFORE THE CLOSING DATE.

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND THE ABSENCE OF SUCCESSOR LIABILITY.

PLEASE TAKE FURTHER NOTICE that the Debtor is soliciting offers for the purchase of the Purchased Assets and assumption of the Assumed Liabilities (as defined in the

Stalking Horse APA) of the Debtor consistent with the bid procedures (the “Bidding Procedures”) approved by the Court by entry of an order on [●], 2025 [D.I._____] (the “Bidding Procedures Order”). The deadline for each Potential Bidder to submit a proposal to purchase the Purchased Assets is **Tuesday, April 1, 2025 at 5:00 p.m. (Prevailing Eastern Time)** (the “Bid Deadline”). **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that, if the Debtor receives qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtor will conduct an auction (the “Auction”) of the Purchased Assets on **Thursday, April 3, 2025, at 10:00 a.m. (prevailing Eastern Time)** at the offices of **Morris Nichols Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, DE 19801** (or virtually, or at any other location as the Debtor may hereafter provide notice of in accordance with the Bidding Procedures and Bidding Procedures Order).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, a hearing will be held before the Honorable Judge Brendan L. Shannon, United States Bankruptcy Judge, on **Thursday, April 10, 2025 at __:__ _m. (prevailing Eastern Time)**, in Courtroom #1 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, Delaware 19801, to consider approval of the Sale (the “Sale Hearing”). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued

hearing or on the applicable hearing agenda or other notice filed on the docket of this chapter 11 case.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding Procedures or Stalking Horse APA with respect to (a) matters arising under Contracts and Leases following the Closing, or (b) the assignment of Contracts and Leases to parties other than the Stalking Horse Bidder, the deadline to file objections, if any, to the transactions contemplated by the Stalking Horse APA or to entry of the Sale Order is **Thursday, April 3, 2025 at 4:00 p.m. (Prevailing Eastern Time)** (the “Sale Objection Deadline”). Objections, if any, must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be actually received no later than the Sale Objection Deadline by the following parties: (a) proposed counsel to the Debtor, Morris, Nichols, Arsht & Tunnell, 1201 N. Market Street, 16th Floor, Wilmington, Delaware 19801, Attn: Derek C. Abbott (dabbott@morrisnichols.com); Eric D. Schwartz (eschwartz@morrisnichols.com); Andrew R. Remming (aremming@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Jonathan M. Weyand (jweyand@morrisnichols.com); Luke Brzozowski (lbrzozowski@morrisnichols.com); (b) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Benjamin A. Hackman (benjamin.a.hackman@usdoj.gov); (c) counsel to any official committee of unsecured creditors appointed in the case (the “Committee”); and (d) counsel to Pioneering Medicines 08-B, Inc.: Goodwin Procter LLP, 620 Eighth Avenue, New York, NY 10018, Attn: Kizzy L. Jarashow (kjarashow@goodwinlaw.com); Barry Z. Bazian (bbazian@goodwinlaw.com); Liza L. Burton (lburton@goodwinlaw.com), and Potter Anderson

& Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801, Attn: L. Katherine Good (kgood@potteranderson.com).

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion (and all exhibits thereto), the Bidding Procedures Order, the Bidding Procedures, and proposed Sale Order (and all exhibits thereto) are available for review free of charge by accessing <https://cases.ra.kroll.com/omega/>.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order, a separate notice will be provided to the counterparties to executory contracts and unexpired leases that may be assumed and assigned in connection with the Sale.

Dated:
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Draft

Eric D. Schwartz (No. 3134)
Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Daniel B. Butz (No. 4227)
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lbrzozowski@morrisnichols.com

*Proposed Counsel to the Debtor and
Debtor in Possession*

EXHIBIT B

Stalking Horse Agreement

ASSET PURCHASE AGREEMENT¹

by and among

Pioneering Medicines 08-B, Inc.

and

OMEGA THERAPEUTICS, INC.

February [], 2025

¹ **Note to Draft:** This draft remains subject to continued review and diligence of PM08-B in all respects.

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Schedule 2.6(a): Assumed Contract List

Exhibit A	-	Form of Bill of Sale and Assignment and Assumption Agreement
Exhibit B	-	Form of Patent Assignment
Exhibit C	-	Form of Trademark Assignment
Exhibit D	-	Form of Sale Procedure Order

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into as of February [•], 2025, by and between Omega Therapeutics, Inc., a Delaware corporation (“Seller” or the “Debtor”), and Pioneering Medicines 08-B, Inc., a Delaware corporation (together with its permitted successors, designees and assigns, “Buyer”). Seller and Buyer are referred to collectively herein as the “Parties.” Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in Article I.

WHEREAS, on the date hereof, Seller intends to file voluntary petitions for relief (the “Chapter 11 Case”) pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”);

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

WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to acquire and assume from Seller, pursuant to Sections 363 and 365 of the Bankruptcy Code, the Purchased Assets and the Assumed Liabilities upon the terms and subject to the conditions set forth herein;

WHEREAS, Seller intends to seek entry of Bidding Procedures Order by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) upon the terms and subject to the conditions set forth herein and in the Bidding Procedures Order;

WHEREAS, Seller intends to seek the entry of the Sale Order by the Bankruptcy Court approving this Agreement and authorizing Seller to consummate the Contemplated Transactions upon the terms and subject to the conditions set forth herein and in the Sale Order;

WHEREAS, the board of directors of Seller has determined that it is advisable and in the best interests of Seller’s creditors, equity holders and estate and the beneficiaries of such estate to consummate the Contemplated Transactions provided for herein pursuant to the Bidding Procedures Order and the Sale Order and has approved this Agreement, subject to the terms and conditions contemplated by the Bidding Procedures Order; and

WHEREAS, the Contemplated Transactions are subject to the approval of the Bankruptcy Court, subject to the terms and conditions as contemplated by the Bidding Procedures Order, and will be consummated only pursuant to the Sale Order to be entered by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, intending to be legally bound, the Parties agree as follows:

ARTICLE I DEFINITIONS

“Accounts Receivable” means (a) all accounts, accounts receivable, contractual rights to payment, notes, notes receivable, negotiable instruments, chattel paper, and vendor and supplier rebates of Seller and (b) any security interest, claim, remedy or other right related to any of the foregoing.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise. Notwithstanding anything to the contrary in the foregoing, (i) Affiliates of Seller shall only include its Subsidiaries and (ii) Affiliates of Buyer shall not include Seller or its Subsidiaries.

“Agreement” has the meaning set forth in the preamble.

“Alternate Transaction” means a transaction or series of related transactions pursuant to which Seller, pursuant to the Bidding Procedures Order or otherwise, (a) accepts one or more Qualified Bids, other than that of Buyer, as the highest or best offer, or (b) sells, transfers, leases or otherwise disposes of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Seller or otherwise), including pursuant to a Plan or refinancing, all or a material portion of the Purchased Assets (or agrees to do any of the foregoing) in a transaction or series of transactions to a Person or Persons other than Buyer; provided that with respect to any series of related transactions described herein, the first such transaction in such series constitutes an “Alternate Transaction” for purposes of Section 8.1 and Section 8.3.

“Assumed Contract List” means Schedule 2.6(a) hereto (as such schedule may be updated pursuant to Section 2.6(a)).

“Assumed Contracts” means those Leases and Contracts that are listed on Schedule 2.6(a), or are otherwise elected by Buyer or deemed to be “Assumed Contracts” pursuant to this Agreement, which shall be assumed by Seller and assigned to Buyer pursuant to Section 2.6 and Section 365 of the Bankruptcy Code, which, for the avoidance of doubt shall not include any Non-Real Property Contract or Lease that is excluded and rejected pursuant to Section 2.6.

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Assumed Permits” means all Required Permits that are transferable in accordance with their terms and under applicable Law, but excluding all Required Permits to the extent related primarily to any Excluded Asset (including any Lease that is not an Assumed Contract).

“Auction” means the auction for the sale and assignment of the Purchased Assets as specified in the Bidding Procedures Order.

“Avoidance Actions” means all causes of action, lawsuits, claims, rights of recovery and other similar rights of Seller, including avoidance, recovery, subordination claims or causes of action of the Seller under the Bankruptcy Code, including Sections 544 through 553 and Section 724 thereof, or under Law of the United States or any state, territory or possession thereof, the District of Columbia or any foreign jurisdiction (including any preference or fraudulent conveyance action under such laws), and the proceeds thereof.

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

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bid” means a credit bid pursuant to Section 363(k) of the Bankruptcy Code for (i) all DIP Obligations, including any and all costs, fees, expenses, premiums and other amounts under the DIP Loan Agreement, and (ii) the full amount of any Prepetition Secured Obligations that have not been discharged with the Roll-Up for the DIP Collateral, in an aggregate amount of not less than \$11,461,086.

“Bid Protections” means an expense reimbursement for reasonable documented costs, fees and expenses incurred in connection with the Contemplated Transactions in an amount not to exceed \$300,000.00.

“Bidding Procedures Order” means an order of the Bankruptcy Court approving the bidding procedures relief requested in the Sale Motion in substantially the form attached as Exhibit D hereto.

“Bill of Sale and Assignment and Assumption Agreement” means a bill of sale and assignment and assumption agreement, substantially in the form attached as Exhibit A hereto.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks located in Wilmington, Delaware shall be authorized or required by Law to close.

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

“Buyer Released Parties” has the meaning set forth in Section 6.9(a).

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

“Claim” means a “claim” as defined in section 101(5) of the Bankruptcy Code, whether arising before or after the Petition Date.

“Closing” means the closing of the transactions contemplated by this Agreement, which shall be deemed to have occurred at 12:01 a.m. (Eastern Time) on the Closing Date.

“Closing Date” means the second (2nd) Business Day after the date on which all conditions to the obligations of Seller and Buyer to consummate the Contemplated Transactions set forth in Article VII (other than conditions with respect to actions Seller and/or Buyer will take at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or

waived by the Party entitled to waive that condition, or at such other time or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto.

“Collaboration Agreement” means that certain Research Collaboration Agreement with Novo Nordisk A/S, Buyer, Seller and the other parties named therein, dated as of December 31, 2023.

“Committee” means the official committee of unsecured creditors appointed in the Chapter 11 Case.

“Company SEC Documents” means any documents filed or furnished by Seller with the SEC since January 1, 2024.

“Consent” means any approval, consent, ratification, permission, clearance, designation, qualification, waiver or authorization, or an order of the Bankruptcy Court that deems or renders any of the foregoing unnecessary.

“Contemplated Transactions” means the sale by Seller to Buyer, and the purchase by Buyer from Seller, of the Purchased Assets and the assumption by Buyer of the Assumed Liabilities.

“Contract” means any written or oral agreement, contract, lease, sublease, indenture, mortgage, instrument, guaranty, loan or credit agreement, note, bond, customer order, purchase order, sales order, sales agent agreement, supply agreement, development agreement, joint venture agreement, promotion agreement, license agreement, contribution agreement, partnership agreement or other arrangement, understanding, permission or commitment that, in each case, is legally-binding.

“Cure Amounts” means all amounts payable in connection with the cure of monetary defaults under any of the Assumed Contracts to the extent required by Section 365(b) of the Bankruptcy Code, and giving effect to any agreements between Buyer and the counterparties to the Assumed Contracts. Notwithstanding the foregoing, the Cure Amounts shall not include any amounts owing under an Assumed Contract to the extent such amounts are contemplated to be paid, and for which funds have been allocated, under the DIP Budget.

“Current Employees” means all individuals employed by Seller as of the day before the Closing Date, whether active or not (including those on short-term disability, leave of absence, paid or unpaid, or long-term disability).

“Debtor” has the meaning set forth in the preamble.

“Delaware Action” means the proceeding commenced by Joel Newman, derivatively on behalf of Nominal Defendant Omega Therapeutics, Inc. before the Court of Chancery of the State of Delaware, Case No. 2024-0636-PAF.

“DIP Budget” shall have the same meaning as the term “DIP Budget” as defined in the DIP Order.

“DIP Collateral” shall have the same meaning given such term in the DIP Order.

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

“DIP Obligations” shall have the meaning given to such term in the DIP Order.

“DIP Lender” shall have the same meaning given such term in the DIP Order.

“DIP Loan Agreement” means the superpriority secured debtor-in-possession credit agreement between Debtor and Seller.

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

“DIP Order” means as of any date of determination (a) the *Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender(III) Scheduling a Final Hearing, and (IV) Granting Related Relief* that was entered by the Bankruptcy Court on February 11, 2025 (the “Interim Order”) or (b) the Final Order (as defined in the Interim Order), whichever such Order is then in effect.

“DIP Secured Parties” means Pioneering Medicines 08-B, Inc.

“Disclosure Schedule” has the meaning set forth in Article III.

“Employee Benefit Plan” means any (a) employee benefit plan within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA; (b) stock option plan, stock purchase plan, equity-based plan, retention plan, program, agreement or arrangement, profit sharing plan, bonus or incentive plan, program, agreement or arrangement, deferred compensation arrangement or agreement, severance pay plan, program or agreement, compensation plan, program, agreement or arrangement, change in control plan, program, agreement or arrangement, supplemental income arrangement, vacation plan or policy, and any other employee benefit plan, agreement or arrangement, not described in (a) above; and (c) plan or arrangement providing compensation to employee and non-employee directors, in each case that Seller or any of its Subsidiaries sponsors, contributes to or provides benefits under or through, or has any obligation to contribute to or provide benefits under or through, or if such plan provides benefits to or otherwise covers any Current Employee or Former Employee or officer or director of Seller or any of its Subsidiaries (or their spouses, dependents, or beneficiaries) or with respect to which Seller or any of its Subsidiaries has or may have any Liability (contingent or otherwise, including by reason of being an ERISA Affiliate).

“Employee Roster” has the meaning set forth in Section 6.4(a).

“Environmental Laws” all applicable Laws concerning pollution or protection of the environment, human health and safety, and natural resources.

“Equipment” means any and all equipment, computers, machinery, furniture, spare parts, furnishings, fixtures, office supplies, supply inventory, vehicles and all other fixed assets.

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

“ERISA Affiliate” means any entity, trade or business that is, or at any applicable time was, a member of a group described in Section 414(b), (c), (m) or (o) of the IRC or Section 4001(b)(1) of ERISA that includes the Seller.

“Excess Cash” means, as determined upon the Plan Effective Date, an amount equal to (i) Starting Cash minus (ii) Permitted Disbursements.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Claims” means all rights (including rights of set-off and rights of recoupment), refunds, claims, counterclaims, demands, causes of action and rights to collect damages of Seller against third parties to the extent related primarily to any Excluded Asset or Excluded Liability.

“Excluded Contract” means any Contract that is not an Assumed Contract.

“Excluded Employee” has the meaning set forth in Section 6.4(b).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

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

“Final Order” means: (a) an order or judgment of the Bankruptcy Court, as entered on the docket in any Chapter 11 Case (or any related adversary proceeding or contested matter) or the docket of any other court of competent jurisdiction; or (b) an order or judgment of any other court having jurisdiction over any appeal from (or petition seeking certiorari or other review of) any order or judgment entered by the Bankruptcy Court (or any other court of competent jurisdiction, including in an appeal taken) in the Chapter 11 Case (or in any related adversary proceeding or contested matter), in each case that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired according to applicable Law and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; provided that the possibility a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the bankruptcy rules or the local bankruptcy rules of the Bankruptcy Court, may be filed relating to such order shall not prevent such order from being a Final Order.

“Financial Statements” means the consolidated financial statements of Seller (including all related notes or schedules) included or incorporated by reference in the Company SEC Documents, as of their respective dates of filing with the SEC (or, if such Company SEC Documents were amended prior to the date hereof, the date of the filing of such amendment, with respect to the consolidated financial statements that are amended or restated therein).

“Former Employees” means all individuals who have been employed by Seller (or any of its predecessors) who are not Current Employees.

“Fraud” means, with respect to any party to this Agreement, Delaware common law fraud with a specific intent to deceive (and not a constructive fraud, equitable fraud, negligent misrepresentation or omission, or any form of fraud premised on recklessness or negligence) with respect to the making of any of the representations and warranties by Seller contained in Article III, the officer’s certificate required to be delivered pursuant to Section 7.1(j) or any Related Agreement, and not with respect to any other matters; provided that, notwithstanding anything herein to the contrary, solely for purposes of Section 7.1(g) and Section 8.1(i), “Fraud” means, with respect to any party to the DIP Loan Agreement, Delaware common law fraud with a specific intent to deceive (and not a constructive fraud, equitable fraud, negligent misrepresentation or omission, or any form of fraud premised on recklessness or negligence) with respect to the making of any of the representations and warranties by Seller contained in the DIP Loan Agreement or in any officer’s certificate required to be delivered pursuant thereto, and not with respect to any other matters.

“GAAP” means United States generally accepted accounting principles as in effect from time to time.

“Governmental Entity” means any United States federal, state or local or non-United States governmental or regulatory authority, agency, commission, department, court, body or other governmental entity.

“Indebtedness” has the meaning set forth in Section 5.3(b)iii.

“Intellectual Property” means any and all rights, title and interest in or relating to intellectual property of any type, which may exist or be created under the Laws of any jurisdiction throughout the world, including: (a) patents and patent applications, together with all reissues, continuations, continuations-in-part, divisionals, extensions and reexaminations in connection therewith; (b) trademarks, service marks, trade dress, logos, slogans, trade names, service names, brand names, Internet domain names and all other source or business identifiers and general intangibles of a like nature, along with all applications, registrations and renewals in connection therewith, and all goodwill associated with any of the foregoing; (c) rights associated with works of authorship, including exclusive exploitation rights, mask work rights, copyrights, database and design rights, whether or not Registered or published, all registrations and recordings thereof and applications in connection therewith, along with all extensions and renewals thereof; (d) trade secrets; and (e) all other intellectual property rights related to the business of Seller.

“Intellectual Property Assignments” means the Patent Assignment and the Trademark Assignment.

“Interim Order” has the meaning set forth in this Article I under the definition of “DIP Order.”

“Inventory” means all inventory (including finished goods, supplies, raw materials, work in progress, spare, replacement and component parts) maintained or held by, stored by or on behalf of, or in transit to, Seller, whether for sale or non-commercial use (e.g., validation) or otherwise, together with any interests therein, including (x) being held by customers pursuant to consignment arrangements or (y) being held by suppliers or vendors under tolling or similar arrangements.

“IRC” means the United States Internal Revenue Code of 1986, as amended.

“IT Assets” means computers, software, firmware, middleware, servers, workstations, routers, hubs, switches, telecommunication hardware, audio/video hardware, security system hardware, data communications lines, and all other information technology Equipment, and all associated documentation.

“Law” means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, Order, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, determination, decision, opinion, guidance or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity, or court of competent jurisdiction, or other legal requirement or rule of law, including applicable building, zoning, subdivision, health and safety and other land use Laws.

“Leased Real Property” means all (a) leasehold or sub-leasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property which is used in or otherwise related to the business of Seller, including the right to all security deposits and other amounts and instruments deposited by or on behalf of Seller thereunder, and (b) any buildings, structures, improvements and fixtures located on any Leased Real Property which are owned by Seller, regardless of whether title to such buildings, structures, improvements or fixtures are subject to reversion to the landlord or other third party upon the expiration or termination of the Lease for such Leased Real Property (“Leasehold Improvements”).

“Leasehold Improvements” has the meaning set forth in this Article I in the definition of “Leased Real Property”.

“Leases” means all leases, subleases, licenses, concessions and other Contracts, including all amendments, extensions, renewals, guaranties and other agreements with respect thereto, in each case pursuant to which Seller holds any Leased Real Property.

“Liability” means, as to any Person, any debt, Claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred, or asserted or when the relevant events occurred or circumstances existed.

“Lien” means any lien (as defined in Section 101(37) of the Bankruptcy Code), encumbrance, right, demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, encroachments, judgments, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use (whether known or unknown, secured or unsecured or in the nature of setoff or recoupment, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or nonmaterial, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, Law, equity, or otherwise, including claims otherwise arising under doctrines of successor liability).

“Material Adverse Effect” means any change, event, effect, development, condition, circumstance or occurrence (when taken together with all other changes, events, effects, developments, conditions, circumstances or occurrences), that (a) is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to the condition (financial or otherwise), value or results of operations of the Purchased Assets (taken as a whole); provided, however, that no change, event, effect, development, condition, circumstance or occurrence related to any of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been a Material Adverse Effect: (i) the filing the Chapter 11 Case or the effect, directly or indirectly, of such filing, including (A) any objections in the Bankruptcy Court to (1) this Agreement or any of the transactions contemplated hereby or thereby, (2) the Bidding Procedures Order or (3) the assumption or rejection of any Assumed Contract and (B) any Order of the Bankruptcy Court or any actions or omissions of Seller or their Subsidiaries in compliance therewith; (ii) acts of war, armed hostilities, sabotage or terrorism, or any escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreements, except to the extent that such change has a materially disproportionate adverse effect on the business of Seller relative to the adverse effect that such changes have on other companies in the industry in which Seller operates; (iii) changes in conditions in the U.S. or global economy or capital or financial markets generally, including changes in interest or exchange rates, except to the extent that such change has a materially disproportionate adverse effect on the business of Seller relative to the adverse effect that such changes have on other companies in the industry in which Seller operates; (iv) resulting from any act of God or other force majeure event (including natural disasters) (but, and notwithstanding anything contained in this paragraph to the contrary, excluding, for the avoidance of doubt, any global or national epidemic, pandemic (whether or not declared as such by any Governmental Entity) or viral outbreak (including the “Coronavirus” or “COVID-19” pandemic), except to the extent that such change has a materially disproportionate adverse effect on Seller relative to the adverse effect that such changes have on other companies in the industry in which Seller operates); or (v) changes in Law or in GAAP or interpretations thereof; or (b) would reasonably be expected to prevent, materially delay or materially impair to the ability of Seller to consummate the transactions contemplated by this Agreement or the Related Agreements on the terms set forth herein and therein.

“Material Contract” has the meaning set forth in Section 3.6.

“Non-Real Property Contracts” means the Contracts to which Seller is a party other than the Leases.

“Offeree” has the meaning set forth in Section 6.4(a).

“Order” means any judgment, decree, ruling, decision, opinion, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, judicial order, administrative order or any other order of any Governmental Entity.

“Ordinary Course of Business” means the ordinary and usual course of business of Seller taken as a whole consistent with past custom and practice and taking into account the commencement of the Chapter 11 Case.

“Outside Date” means April 21st, 2025.

“Owned Intellectual Property” has the meaning set forth in Section 3.7(a).

“Parties” has the meaning set forth in the preamble.

“Patent Assignment” means a patent assignment agreement, substantially in the form attached as Exhibit B hereto.

“Permit” means any and all franchise, approval, permit (including environmental, construction and operation permits), license, order, registration, certificate, variance, Consent, exemption, clearance, exemption, classification, tariff, rate schedule or other authorization issued, granted, given or otherwise obtained or required to be obtained, from or by any Governmental Entity, under the authority thereof or pursuant to any applicable Law.

“Permitted Disbursements” means the sum of (A) the cash payments actually disbursed by Seller pursuant to and in accordance with the DIP Budget from the Petition Date through the Plan Effective Date; plus (B) accrued costs, fees, and expenses which have not yet been paid as of the Plan Effective Date but that are payable pursuant to and in accordance with the DIP Budget; plus (C) without duplication, amounts for administrative and priority claims actually paid or to be paid under the Plan pursuant to and in accordance with the DIP Budget.

“Permitted Liens” means (a) Liens for Taxes which are (i) being contested in good faith by appropriate proceedings or (ii) not due and payable as of the Closing Date and which shall be prorated or released at Closing, and, in each case of clauses (i) and (ii), for which adequate reserves have been made on the Financial Statements in accordance with GAAP and which shall be prorated or otherwise released at Closing; (b) mechanics liens and similar liens for labor, materials or supplies provided with respect to real property incurred in the Ordinary Course of Business which are being contested in good faith by appropriate proceedings for which adequate reserves have been made on the Financial Statements in accordance with GAAP and which shall be prorated or otherwise released at Closing; (c) with respect to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Entity having jurisdiction over such real property which are not violated by the current use or occupancy of such real property or the operation of the business of Seller, except where any such violation would not, individually or in the aggregate,

materially impair the use, operation or transfer of the affected property or the conduct of the business of Seller thereon as it is currently being conducted; (d) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not materially impair value or the use or occupancy of such real property or materially interfere with the operation of the business of Seller at such real property; (e) with respect to Leasehold Improvements, any reversion or similar rights to the landlord or other third party upon expiration or termination of the applicable Lease; (f) any Liens associated with or arising in connection with any Assumed Liabilities; (g) any Liens approved or granted by the Buyer or any of its Affiliates at or after the Closing or that arise out of or result from any action by the Buyer or any of its Affiliates; or (h) Liens extinguished by the Sale Order.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or any other entity, including any Governmental Entity or any group or syndicate of any of the foregoing.

“Personal Property Leases” means all leases of personal property relating to personal property used by Seller or to which Seller is a party or by which the properties or assets of Seller are bound.

“Petition Date” means the date of the filing of the Chapter 11 Case.

“Plan” means a Chapter 11 plan of reorganization or liquidation proposed by Seller and/or the Committee in the Chapter 11 Case.

“Plan Effective Date” means the effective date of a plan of liquidation concerning Seller confirmed by the Bankruptcy Court after the Closing or the closing of an Alternate Transaction, as applicable.

“Prepetition Secured Obligations” shall have the same meaning given to “Prepetition Note Obligation” in the DIP Order.

“Proceeding” means any action, cause of action, suit, claim, investigation, mediation, audit, grievance, demand, hearing or proceeding, whether civil, criminal, administrative or arbitral, whether at law or in equity and whether before any Governmental Entity or arbitrator.

“Professional Services” means any legal services, accounting services, financial advisory services, investment banking services or any other professional services provided by Seller’s advisers obtained pursuant to any order of the Bankruptcy Court.

“Purchase Price” has the meaning set forth in Section 2.5(a).

“Purchased Assets” has the meaning set forth in Section 2.1.

“Qualified Bid” means competing bids qualified for the Auction in accordance with the Bidding Procedures Order.

“Records” means the books, records, information, ledgers, files, invoices, documents, work papers, correspondence, lists (including customer lists, supplier lists and mailing lists), plans

(whether written, electronic or in any other medium), drawings, designs, specifications, creative materials, advertising and promotional materials, marketing plans, studies, reports, data and similar materials related to the business of Seller.

“Registered” means issued by, registered with, renewed by or the subject of a pending application before any Governmental Entity or domain name registrar.

“Regulatory Approval” means any filings with any Governmental Entity, consents, approvals, authorizations, or notices (to the extent required from a Governmental Entity), licenses, franchises, Permits, concessions, exemptions, orders, certificates, registrations, re-registrations, applications, declarations and filings pertaining to the aforesaid issued, granted, given or otherwise made available by or under the authority of any Governmental Entity or pursuant to any applicable Laws, legislation, directives, measures, treaties, conventions and other agreements between states, or between states and supranational bodies, and rules of common or civil law, in each case, having the force of law and having effect in any jurisdiction, and all data, documents and files created in preparation of filing any of the foregoing.

“Related Agreements” means the Bill of Sale and Assignment and Assumption Agreement, the Intellectual Property Assignments and any other instruments of transfer and conveyance as may be required under applicable Law to convey valid title of the Purchased Assets to Buyer.

“Related Persons” means, collectively, with respect to any Person, such Person’s predecessors, successors, assigns and present and former Affiliates (as defined in the Bankruptcy Code) and subsidiaries, and each of their respective current and former officers, directors, principals, employees, equity holders (regardless of whether such interests are held directly or indirectly), members, managers, managed accounts or funds, fund advisors, advisory or committee board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case acting in such capacity at any time.

“Representative” means a Person’s officers, directors, managers, employees, advisors, representatives (including its legal counsel and its accountants) and agents.

“Required Permits” has the meaning set forth in Section 3.14.

“Roll-Up” shall have the same meaning given such term in the DIP Order.

“Sale Hearing” means the hearing conducted in the Bankruptcy Court seeking entry of the Sale Order.

“Sale Motion” means a motion filed by Seller, in form and substance reasonably satisfactory to Seller and Buyer, requesting, among other things, authority to sell all or substantially all of the Debtors’ assets, entry of the Bidding Procedures Order, authority for the Debtors to enter into this Agreement and Related Agreements, entry of the Bidding Procedures Order, and entry of the Sale Order approving this Agreement and Related Agreements.

“Sale Order” means an Order of the Bankruptcy Court, in a form and substance acceptable to Buyer and Seller: (a) approving (i) this Agreement and the other Related Agreements (each as

may be amended following an Auction, if one is held and Buyer presents the Successful Bid (as such term is defined in the Bidding Procedures Order)) and the execution, delivery, and performance by Seller of this Agreement, the other Related Agreements and the other instruments and agreements contemplated hereby and thereby, (ii) the sale of the Purchased Assets to Buyer free and clear of all Liens based on appropriate findings and rulings pursuant to, *inter alia*, Sections 363(b), 363(f), 363(m) and 365 of the Bankruptcy Code including, but not limited to, Sections 365(h), 365(i), 365(l) and 365(n) of the Bankruptcy Code and, to the fullest extent permitted by law, the release of Buyer of any rights otherwise associated with, and which may otherwise be to the benefit of, any third parties, other than Permitted Liens and any Liens included in the Assumed Liabilities, (iii) the assumption of the Assumed Liabilities by Buyer on the terms set forth herein and in the other Related Agreements, and (iv) the assumption and assignment to Buyer of the Assumed Contracts on the terms set forth herein and in the other Related Agreements; (b) include a finding that Buyer is a good faith purchaser pursuant to Section 363(m) of the Bankruptcy Code; (c) include a finding that Buyer is not deemed to be a successor to Seller, to have, de facto or otherwise, merged with or into Seller or to be a mere continuation of Seller; (d) include a finding that Buyer will not have any derivative, successor, transferee or vicarious Liability for Liabilities of Seller or its Affiliates by reason of any theory of Law or equity (whether under federal or state Law or otherwise) as a result of the transactions contemplated by this Agreement including, but not limited to, any Liabilities on account of transfer Taxes, except as expressly assumed by Buyer in this Agreement; (e) authorizing, and granting relief from the automatic stay to allow, the Buyer to take any actions with respect to the Specified Claims, including to replace the plaintiffs with the Buyer in any proceedings with respect to the Specified Claims; and (f) providing that the Closing will occur in accordance with the terms and conditions hereof.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated thereunder.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Seller” has the meaning set forth in the preamble.

“Seller’s Knowledge” (or words of similar import) means the actual knowledge of Kaan Certel, Jennifer Nelson and Barbara Chan.

“Seller Released Parties” has the meaning set forth in Section 6.9(b).

“Specified Claims” means all claims, rights and causes of action that have been or could be asserted by or on behalf of the Seller (or its predecessors or successors, including the Seller’s bankruptcy estate), whether derivatively or directly, under any legal theory, including, but not limited to, all claims and causes of action that are or could have been asserted in the Delaware Action, in connection with any facts existing before, on or after the Petition Date against any current or former director, officer, equity holder, or Transferred Employee of the Seller (or its predecessors), or any Related Persons of each of them, including, but not limited to, (i) the DIP Lender, (ii) the Delaware Action defendants, and (iii) the Related Persons of each of the foregoing.

“Starting Cash” means the sum of: (A) the cash of Seller upon the Petition Date, plus (B) the cash funded by the DIP Lender under the DIP Loan Documents, plus (C) any cash receipts received by Seller between the Petition Date and the Plan Effective Date.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or other persons performing similar functions with respect to such corporation) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity’s gains or losses or shall be or control any managing director, managing member, or general partner of such business entity (other than a corporation). The term “Subsidiary” shall include all Subsidiaries of such Subsidiary.

“Tax” or “Taxes” means any United States federal, state or local or non-United States income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the IRC), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, real property, personal property, ad valorem, escheat, sales, use, transfer, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever (however denominated), whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether or not disputed.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Termination Event” has the meaning set forth in Section 8.1.

“Trademark Assignment” means a trademark assignment agreement, substantially in the form attached as Exhibit C hereto.

“Transfer Tax” means any stamp, documentary, registration, transfer, added-value or similar Tax imposed under any applicable Law in connection with the transactions contemplated by this Agreement.

“Transferring Party” has the meaning set forth in Section 5.1(c).

“Willful Breach” has the meaning set forth in Section 8.4.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Purchased Assets. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall purchase, acquire and accept from Seller, and Seller shall sell, transfer, assign, convey and deliver to Buyer, all of Seller's right, title and interest in, to and under the Purchased Assets, free and clear of all Liens (other than Permitted Liens and any Liens included in the Assumed Liabilities), for the consideration specified in Section 2.5. "Purchased Assets" shall mean all of the right, title and interest of Seller in, to and under the tangible and intangible assets (including goodwill), properties, rights, going concern value, claims and Contracts used, useful, or held for use in, or related to, the business of Seller (but excluding Excluded Assets) wherever situated and of whatever kind and nature, real or personal, as of the Closing, including:

(a) all Intellectual Property, supplies and materials, files, records (including clinical and pre-clinical data), know-how, manufacturing assets and leases used, useful, or held for use in, or related to, the business of Seller, including, without limitation, the items listed on Schedule 2.1(a);

(b) all Accounts Receivable of Seller as of the Closing;

(c) all Excess Cash, if any;

(d) all Inventory of Seller as of the Closing, including all rights of Seller to receive such Inventory, supplies and materials which are on order as of the Closing, whether or not obsolete or carried on Seller's books of account, in each case, with any transferable warranty and service rights related thereto;

(e) all Assumed Contracts that have been assumed by and assigned to Buyer pursuant to Section 2.6;

(f) all tangible assets (including Equipment, accessories, materials and all other similar items of tangible personal property or capital assets) of Seller, including any tangible assets of Seller located at any Leased Real Property and any other tangible assets on order to be delivered to Seller, regardless of where located;

(g) subject to Section 2.2 below, all Records, including Records related to Taxes paid or payable by Seller related to the business of Seller; provided, that the Records described in this Section 2.1(g) shall not include any Tax records or books and records the transfer of which would be prohibited by applicable Law; and Seller shall have the right to retain copies of any Records until the winding up and termination of Seller;

(h) to the extent related to an Assumed Contract(s), the related Leased Real Property, including any Leasehold Improvements and all permanent fixtures, improvements, and appurtenances thereto and including any security deposits or other deposits delivered in connection therewith, and all rights under any undrawn letters of credit associated with any such security deposits;

(i) all goodwill of Seller as a going concern or related to the Purchased Assets, including all goodwill associated with the Intellectual Property owned by Seller and all rights under any confidentiality agreements executed by any third party for the benefit of Seller to the extent relating to the Purchased Assets and/or the Assumed Liabilities (or any portion thereof);

(j) all of the Assumed Permits and all rights, interests, and benefits accruing under all Assumed Permits, and all pending applications therefor;

(k) all insurance benefits and policies relating to or insuring any of the Purchased Assets or Assumed Liabilities (including returns, recoveries and refunds of any premiums paid, or other amounts due back to Seller);

(l) all other rights of Seller against third parties, including Buyer and Related Persons of Buyer, and including suppliers, vendors, merchants, distributors, manufacturers and counterparties to leases, licensees, licensors or of Seller arising under or related to any Assumed Contract, other Purchased Asset or Assumed Liability, including causes of action, claims, including commercial tort claims, counterclaims, defenses, credits, rebates (including any vendor or supplier rebates), demands, allowances, refunds, rebates, credits, allowances, Proceedings, rights of set off, rights of recovery, rights of subrogation, rights of recoupment, rights under or with respect to express or implied guarantees, warranties, representations, covenants or indemnities made by such third parties, including Buyer and Related Persons of Buyer, or other similar rights, in each case at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent, including the Avoidance Actions and the Specified Claims, and all proceeds of the foregoing; provided, however, that effective immediately upon the Closing, all Avoidance Actions under Chapter 5 of the Bankruptcy Code shall be waived and released by the Buyer; provided, however, that the foregoing shall not include any claims of the Seller, if any, on account of nonpayment of any ordinary course license fee obligations of any of the foregoing Persons to the extent accruing between the Petition Date and the Closing Date under and in accordance with the terms of the agreements identified on Schedule 2.1(l).

(m) all credits, prepaid expenses, deferred charges, advance payments, refunds, rights of set-off, rights of recovery, deposits (including customer deposits and security deposits for rent, electricity, telephone, or otherwise), prepaid or deferred charges, expenses and duties (including any of the foregoing related to Assumed Contracts) arising under or relating to the Purchased Assets or the Assumed Liabilities;

(n) all rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and any other Person to the extent relating to Equipment purchased by, products sold by, or services provided to Seller or to the extent affecting any Purchased Assets and/or Assumed Liabilities;

(o) all rights and obligations under non-disclosure, confidentiality, non-compete, non-interference, non-solicitation, and similar arrangements or Contracts with any current or former employees and/or agents of Seller or with third parties;

(p) all of Seller's telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names;

(q) all rights arising from any refunds, overpayments, credits or rebates due from federal, state and/or local Governmental Entities with respect to Taxes related to the Purchased Assets or Assumed Liabilities;

(r) all IT Assets; and

(s) all other assets that are related to or used in connection with the Purchased Assets or the business of Seller (but excluding all of the Excluded Assets).

Notwithstanding anything set forth in this Agreement or any Related Agreement to the contrary, Excess Cash, if any, shall be delivered to Buyer within 45 days following the Plan Effective Date and until such date Buyer (solely in its capacity as Buyer hereunder) shall have no right, title or interest in, the cash, cash equivalents, bank deposits and similar cash items of Seller.

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller be deemed to sell, transfer, assign, convey or deliver, and Seller shall retain all right, title, and interest to, in and under any properties, rights, interests or other assets of Seller other than the Purchased Assets (collectively, the "Excluded Assets"). Without limiting the foregoing "Excluded Assets" means all of Seller's right, title and interest in and to the following:

(a) Contracts, in each case, other than Assumed Contracts;

(b) all Permits other than the Assumed Permits;

(c) all of Seller's certificates of incorporation, bylaws and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, unit certificates and other documents relating to the organization, maintenance and existence of Seller as a corporation;

(d) all shares of capital stock, limited liability company interests or other equity securities owned by Seller or any of its Subsidiaries or securities convertible into, exchangeable, or exercisable for any such shares of capital stock, limited liability company interests or other equity securities of Seller or any of its Subsidiaries;

(e) all net operating losses of Seller;

(f) all cash, cash equivalents, bank deposits and similar cash items of Seller that do not constitute Excess Cash, and all bank accounts of Seller;

(g) the Excluded Claims;

(h) any loans or notes payable to Seller or any of its Affiliates from any employee of Seller or any of its Affiliates (other than Ordinary Course of Business employee advances and other than loans or notes from any Transferred Employees);

(i) any (i) Records containing confidential personal private information including confidential personnel and medical Records pertaining to any Current Employees or Former Employees to the extent the disclosure of such information is prohibited by applicable Law, (ii) other Records that Seller is required by Law to retain, (iii) any materials primarily related to any Excluded Assets or Excluded Liabilities, (iv) all taxpayer and other identification numbers of Seller, and (v) without limiting Section 2.2(m), any Records or other documents relating to the Chapter 11 Case (or otherwise) that are protected by the attorney-client privilege; provided that Buyer shall have the right to make copies of any portions of such retained Records (other than the Records referenced in subsection (v)) to the extent that such portions relate to any Purchased Asset;

(j) (i) all directors' and officers' liability insurance policies, including any tail insurance policies, including the rights of the directors and officers thereunder for coverage (i.e., advancement of expenses and liability coverage with respect to claims made against such officers and directors), and (ii) all insurance benefits and policies primarily relating to or insuring any of the Excluded Assets or Excluded Liabilities, including in the case of (i) and (ii), all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries under such insurance policies;

(k) all Employee Benefit Plans, together with the assets of any such Employee Benefit Plans and any insurance policies, contracts, administrative services agreements or funding arrangements related thereto;

(l) any warranties, representations, and guarantees to the extent primarily relating to any Excluded Asset, or rights and defenses primarily pertaining to any Excluded Liability; and

(m) any attorney client privilege with respect to Seller and any counsel; provided that for the avoidance of doubt, Seller shall be the sole holder of such attorney-client privilege and notwithstanding anything set forth herein, Seller has not, and shall not be deemed to have, waived any such privilege; and

(n) the rights of Seller under this Agreement and the Related Agreements and all non-cash consideration payable or deliverable to Seller under this Agreement.

Section 2.3 Assumption of Assumed Liabilities. On the terms and subject to the conditions of this Agreement and the Sale Order, at the Closing (or, with respect to Assumed Liabilities under Assumed Contracts or Assumed Permits that are assumed by Buyer after the Closing, if any, such later date of assumption as provided in Section 2.6), Buyer shall assume from Seller (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and Seller shall irrevocably convey, transfer, and assign to Buyer, the following Liabilities, without duplication and only to the extent not paid prior to the Closing and no other Liabilities (collectively, the "Assumed Liabilities");

(a) all Cure Amounts under any and all Assumed Contracts in accordance with and subject to the limitations set forth in Section 2.6;

(b) Liabilities under the Assumed Contracts and Assumed Permits solely to the extent arising from periods occurring on or after the Closing Date that relate (and only to the extent so relating) to facts, circumstances, or occurrences first arising after the Closing, and that do not arise from or relate to, and are not in connection with, any event, circumstance, or condition occurring or existing at or prior to Closing that, with or without notice or lapse of time, would constitute or result in a breach, violation, or default of such Assumed Contract or Assumed Permit by Seller or any of its Affiliates; and

(c) all Liabilities from the ownership, possession or use of the Purchased Assets, solely to the extent such Liabilities arise after the Closing Date.

Notwithstanding the foregoing, Assumed Liabilities shall not include any post-petition Liabilities of Seller that were incurred in violation of the DIP Order or the DIP Loan Documents.

Section 2.4 Excluded Liabilities. Notwithstanding anything herein to the contrary, the Parties expressly acknowledge and agree that Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Seller, whether existing on the Closing Date or arising thereafter, other than the Assumed Liabilities (all such Liabilities that Buyer is not assuming being referred to collectively as the “Excluded Liabilities”), and Seller shall be solely and exclusively liable for all such Excluded Liabilities. The Excluded Liabilities shall include:

(a) the sponsorship of, and all Liabilities at any time arising under, pursuant to or in connection with, all Employee Benefit Plans and all Liabilities related to any Current Employee or Former Employee, contractor or other service provider of Seller or any Subsidiary thereof;

(b) all Liabilities relating to or otherwise arising, whether before, on or after the Closing Date, out of, or in connection with, any of the Excluded Assets;

(c) any and all Liabilities of Seller for Indebtedness;

(d) all Liabilities arising from or related to any Proceeding against Seller or any of their respective Affiliates (including, for the avoidance of doubt, any Proceeding related to fraud, breach of fiduciary duty, misfeasance or under any other theory relating to conduct, performance or non-performance of Seller, or any of their respective directors, managers, officers, employees or other Representatives), or related to the Purchased Assets or the Assumed Liabilities, pending or threatened or having any other status or with respect to facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to the Closing Date (including any breach, default, failure to perform, torts related to performance, violations of Law, infringements or indemnities, guaranties and overcharges, underpayments, or penalties, whether or not in respect of any Contract), including any successor liability claims or that may be owed to or assessed by, any Governmental Entity or other Person, and whether commenced, filed, initiated, or threatened prior to, on, or following the Closing;

(e) all costs and expenses incurred or to be incurred by Seller in connection with this Agreement and the consummation of the transactions contemplated hereby or in connection with the Chapter 11 Case, including those owing for Professional Services;

(f) all Liabilities for any Taxes (including Taxes payable by reason of contract, assumption, transferee or successor Liability, operation of Law, pursuant to Treasury Regulation Section 1.1502-6 (or any similar provision of any state or local law) or otherwise), except to the extent expressly included in the Assumed Liabilities, including Liabilities: (i) of Seller arising or relating to any taxable period (or portion thereof) prior to the Closing Date, (ii) owed by Seller or any of its direct or indirect beneficial owners or Affiliates (whether or not relating to any taxable period (or portion thereof) prior to the Closing Date), including pursuant to any Tax sharing, Tax indemnity or similar agreement or arrangement to which Seller (or any Affiliate thereof) is obligated under or a party to, (iii) of Seller arising in connection with the consummation of the transactions contemplated by this Agreement, (iv) for Taxes or other Liabilities with respect to the Purchased Assets or the business of Seller with respect to which “responsible person” or similar claims may be made against any of Seller’s or any of its Affiliates’ employees, managers, officers, directors or similar persons, including pursuant to any wage payment statute, and (v) for Taxes arising from or in connection with an Excluded Asset;

(g) any Liability for any intercompany accounts payable by Seller or any of its Affiliates;

(h) all Liabilities of Seller arising prior to the Closing under or pursuant to Environmental Laws, including with respect to any real property owned, operated, leased, or otherwise used by Seller, whether or not used in the Ordinary Course of Business;

(i) all current accrued trade payables to the extent (i) existing on the Closing Date, (ii) incurred after the Petition Date in the Ordinary Course of Business and otherwise in compliance with this Agreement (including Section 5.3) and (iii) not arising under or otherwise relating to any Assumed Liability or any Assumed Contract;

(j) drafts or checks outstanding as of the Closing (except to the extent expressly stated as an Assumed Liability); and

(k) all Liabilities relating to the Seller’s employment or termination of employment of any employees, including Transferred Employees.

Section 2.5 Consideration.

(a) In aggregate consideration for the sale and transfer of the Purchased Assets (the “Purchase Price”) shall be composed of the following:

- i. the Bid;
- ii. the assumption by Buyer of the Assumed Liabilities; and
- iii. the payment of Cure Amounts.

Section 2.6 Assumption and Assignment of Contracts.

(a) Buyer shall have the right at any time until three (3) Business Days prior to the Closing Date (or such later date as provided in this Section 2.6) to amend Schedule 2.6(a) to add or remove any Contract in Buyer's sole discretion. Any Contracts timely added to Schedule 2.6(a) shall constitute Assumed Contracts, and any Contracts timely removed from Schedule 2.6(a) shall constitute Excluded Contracts. The addition or removal of a Contract from Schedule 2.6(a) shall not cause any adjustment to the Purchase Price except for adjustments to add or remove, respectively, the applicable Cure Amounts. Notwithstanding the foregoing, to the extent that an Auction is conducted and the Buyer removes an Assumed Contract from Schedule 2.6(a) after the conclusion of the Auction, then the Buyer shall pay in cash to the Seller an amount equal to the value attributed by the Seller and announced at Auction to the assumption of such Assumed Contract.

(b) A schedule of all of the Seller's Contracts (including the Assumed Contracts) and any Cure Amounts relating thereto shall be filed by Seller with the Bankruptcy Court and served on the counterparties to the Assumed Contracts in accordance with the Bidding Procedures Order.

(c) Notwithstanding the foregoing, a Contract shall not be an Assumed Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Contract (i) expires by its terms on or prior to such time as it is to be assumed by Buyer as an Assumed Contract hereunder, (ii) requires Regulatory Approval (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Buyer of Seller's rights under such Contract in accordance with applicable Law, and such Regulatory Approval has not been obtained, (iii) to the extent that the assignment of all or any portion of the Contract shall be prohibited by law (including by Order of a Governmental Entity), or (iv) requires a consent, or advance notice to, a counterparty (if any) or requires the consent of any other third party that has not been obtained as of the Closing, and which restriction, consent right or right to advance notice cannot be effectively overridden or canceled by any order of the Bankruptcy Court or any provision of the Bankruptcy Code. In the event that any Contract that would otherwise have been assigned to Buyer is deemed not to be assigned pursuant to clause (ii) of the first sentence of this Section 2.6(c), the Closing shall, subject to the satisfaction of the conditions set forth in Article VII nonetheless take place subject to the terms and conditions set forth herein and, thereafter, through the earliest of (w) such time as such Regulatory Approval is obtained, (x) the expiration of the term of such Contract in accordance with its current term, (y) the execution of a replacement Contract by Buyer and (z) the closing of the Chapter 11 Case. Seller and Buyer shall (A) use reasonable efforts to secure such Regulatory Approval as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement proposed by Buyer, including subcontracting, licensing, or sublicensing to Buyer any or all of Seller's rights and obligations with respect to any such Assumed Contract, under which (1) Buyer shall receive the claims, rights, remedies and benefits under, or arising pursuant to, the terms of such Assumed Contract with respect to which the Regulatory Approval has not been obtained and (2) subject to receiving any such claims, rights, remedies and benefits, Buyer shall thereafter assume and bear all Assumed Liabilities with respect to such Assumed

Contract from and after the Closing (as if such Assumed Contracts had been transferred to Buyer as of the Closing) in accordance with this Agreement (including by means of any subcontracting, sublicensing or subleasing arrangement). Upon satisfying any requisite Regulatory Approval requirement applicable to such Assumed Contract after the Closing, such Assumed Contract shall promptly be transferred and assigned to Buyer in accordance with the terms of this Agreement, the Sale Order and the Bankruptcy Code, and otherwise without any further additional consideration. Without limitation of the foregoing, prior to the Closing, Seller shall cooperate with Buyer in connection with obtaining any consent, including by providing Buyer with reasonable access to and facilitating discussions with the applicable counterparties (provided Buyer shall provide Seller a reasonable opportunity to consult with Buyer, and, if reasonably practicable, an opportunity to be present (but not participate) at any meeting) in respect of such consents, and shall use reasonable efforts to assist Buyer with obtaining such consents as promptly as practicable after the date hereof and prior to the Closing. Notwithstanding the foregoing, Seller shall not be obligated hereunder to incur any cost or expense arising after the Closing Date relating to the actions contemplated by this Section 2.6(c) or to execute any guaranty, assumption of liability or other document or instrument requiring Seller to assume any obligations, and any reasonable and documented costs and expenses of Seller arising after the Closing Date to comply with Buyer's written requests pursuant to this Section 2.6(c) shall be borne by Buyer.

(d) In the event of an objection by a Contract counterparty to the Cure Amount asserted by Seller with regard to any Contract (such contract, a "Disputed Contract"), Seller shall either settle the objection of such party or shall litigate such objection under procedures as established by the Bankruptcy Court. In no event shall Seller settle a Cure Amount objection with regard to any Assumed Contract without the express prior written consent of Buyer (with an email consent being sufficient). In the event that a dispute regarding the Cure Amounts with respect to an Assumed Contract has not been resolved as of the Closing, (i) Seller shall notify Buyer of any such pending disputes on the Closing Date, and (ii) no later than three (3) days thereafter, Buyer shall notify Seller (email being sufficient) that it wants Seller to continue prosecuting the Cure objection (a "Post-Closing Disputed Contract"). If Buyer fails to timely notify Seller of its election to continue the prosecution of a Cure objection post-Closing, such Disputed Contract shall automatically be deemed to be an Excluded Contract for all purposes under the Sale Order and this Agreement, and Buyer shall not be obligated to pay any Cure Amount or liabilities associated with such Disputed Contract. Prior to the entry of an Order of the Bankruptcy Court determining any Cure Amount, Buyer shall have the option to designate the Post-Closing Disputed Contract as an Excluded Contract. Upon entry of an Order of the Bankruptcy Court determining any Cure Amount and authorizing the assumption and assignment to Buyer of any Post-Closing Disputed Contract after the Closing, which order shall be in a form and substance that is satisfactory to Buyer (a "Disputed Contract Order"), Buyer shall have the option to designate the Post-Closing Disputed Contract as an Assumed Contract or an Excluded Contract (regardless of whether such Disputed Contract was set forth on Schedule 2.6(a)). If Buyer elects to designate the Post-Closing Disputed Contract as an Excluded Contract, (i) such Post-Closing Disputed Contract shall automatically be deemed to be an Excluded Contract for all purposes under the Sale Order and this Agreement, (ii) Buyer shall not be obligated to pay any Cure Amount or liabilities

associated with such Post-Closing Disputed Contract, and (iii) Buyer shall pay any of the Seller's ordinary course monetary obligations under such Post-Closing Disputed Contract solely to the extent such obligations accrued after the Closing Date through the date on which Buyer elected for such Post-Closing Disputed Contract to be an Excluded Contract (but, for the avoidance of doubt, not including any damages arising from the rejection of such Disputed Contract). If Buyer elects to designate any Disputed Contract, including a Post-Closing Disputed Contract, as an Assumed Contract, such Disputed Contract or Post-Closing Disputed Contract shall be deemed an Assumed Contract for all purposes hereunder and, for the avoidance of doubt, Buyer shall assume the Disputed Contract or Post-Closing Disputed Contract and shall pay the associated Cure Amount (if any); *provided*, however, that if Buyer does not designate a Disputed Contract or Post-Closing Disputed Contract as either an Excluded Contract or an Assumed Contract within fifteen (15) Business Days after the date of the Disputed Contract Order (or such later date as agreed by the Seller and Buyer), (A) such Disputed Contract or Post-Closing Disputed Contract shall automatically be deemed to be an Excluded Contract for all purposes under the Sale Order and this Agreement, (B) Buyer shall not be obligated to pay any Cure Amount associated with such Disputed Contract or Post-Closing Disputed Contract, and (C) Buyer shall pay the Seller's ordinary course monetary obligations under such Disputed Contract or Post-Closing Disputed Contract solely to the extent such obligations accrued after the Closing Date through the date on which such Disputed Contract or Post-Closing Disputed Contract was deemed to be an Excluded Contract (but, for the avoidance of doubt, not including any damages arising from the rejection of such Disputed Contract or Post-Closing Disputed Contract). Notwithstanding anything set forth herein to the contrary, Buyer shall reimburse Seller for any reasonable and documented attorneys' fees incurred after the Closing Date in connection with compliance with this Section 2.6(d).

(e) At any time after the Closing, Seller shall be permitted to reject any Excluded Contracts; provided, however, Buyer may elect to take an assignment of any Contract that was not previously an Assumed Contract and which has not yet been (i) rejected pursuant to an order of the Bankruptcy Court or (ii) deemed rejected by the passage of time pursuant to section 365 of the Bankruptcy Code (a "Previously Excluded Contract") by sending a written notice to Seller (email being sufficient) of such election. If Buyer elects for a Previously Excluded Contract to be an Assumed Contract in accordance with this Section, Seller shall file and serve an assignment and assumption notice on the Contract counterparty to such Previously Excluded Contract (a "Supplemental Assignment Notice") notifying such Contract counterparty of Seller's intention to assume and assign to Buyer such Previously Excluded Contract, including the proposed Cure Amount (if any), and Seller shall use commercially reasonable efforts to cause the assignment of such Contract to Buyer. If such Contract counterparty objects to the proposed assumption and assignment, the Contract at issue shall be deemed a Disputed Contract or a Post-Closing Disputed Contract for all purposes under this Agreement. If such Contract counterparty does not object to the proposed assumption and assignment, Seller shall submit a proposed order to the Bankruptcy Court under certification of counsel approving the assumption and assignment of such Contract to Buyer, which order shall be in a form and substance that is satisfactory to Buyer. Upon entry of such order, such Contract shall be deemed an Assumed Contract for all purposes under this Agreement (subject to approval by the Bankruptcy Court). Buyer shall pay any of the Seller's ordinary course monetary

obligations under such Previously Excluded Contract solely to the extent such obligations accrued after the Closing Date through the date on which the Previously Excluded Contract becomes an Assumed Contract or the date on which Buyer elects for such Previously Excluded Contract to be an Excluded Contract (but, for the avoidance of doubt, not including any damages arising from the rejection of such Previously Excluded Contract). Notwithstanding anything set forth herein to the contrary, Buyer shall reimburse Seller for any reasonable and documented attorneys' fees incurred after the Closing Date in connection with compliance with this Section 2.6(e).

(f) The Sale Order shall contain language approving the assumption and assignment procedures with respect to Disputed Contracts and Previously Excluded Contracts as set forth in this Section 2.6.

Section 2.7 Closing. The Closing shall take place remotely by electronic exchange of counterpart signature pages commencing at 10:00 a.m. Eastern time on the Closing Date.

Section 2.8 Deliveries at Closing.

(a) At the Closing, Seller shall deliver or cause to be delivered to Buyer the following documents and other items:

- i. a counterpart signature page to the Bill of Sale and Assignment and Assumption Agreement, duly executed by Seller;
- ii. a counterpart signature page to each of the Intellectual Property Assignments, duly executed by Seller;
- iii. a properly completed and duly executed IRS Form W-9 from Seller;
- iv. the officer's certificate required to be delivered pursuant to Section 7.1(j), in each case duly executed by each applicable signatory thereto; and
- v. letters executed by the Seller and addressed to applicable regulatory authorities for the transfer of ownership of any investigational (or pre-investigational) new drug or similar foreign correspondence or authorizations for the development of the assets that meet any applicable Laws related to the transfer of ownership for such assets.

(b) At the Closing, Buyer shall deliver to Seller the following documents and other items:

- i. a counterpart signature page to the Bill of Sale and Assignment and Assumption Agreement, duly executed by Buyer;
- ii. a counterpart signature page to each of the Intellectual Property Assignments, duly executed by Buyer;
- iii. the Purchase Price;

iv. the officer's certificate required to be delivered pursuant to Section 7.2(e), duly executed by the applicable signatory thereto;

v. letters executed to the applicable regulatory authorities for the receipt of ownership for any investigational (or pre-investigational) new drug or similar foreign correspondence or authorizations for the development of the assets that meet any applicable Laws related to the transfer of ownership for such assets; and

vi. evidence of the forgiveness and discharge of the Indebtedness subject to the Bid.

Section 2.9 Allocation. Within ninety (90) calendar days after the Closing Date, Buyer shall in good faith prepare an allocation of the Purchase Price (and all capitalized costs and other amounts treated as purchase price for U.S. federal income Tax purposes) among the Purchased Assets in accordance with Section 1060 of the IRC and the Treasury Regulations thereunder (and any similar provision of United States state or local or non-United States Law, as appropriate). Seller shall have thirty (30) calendar days following receipt of Buyer's proposed allocation to review and comment on such proposed allocation and Buyer shall consider such comments in good faith. Thereafter, Buyer shall provide Seller with Buyer's final allocation schedule, and Buyer and Seller shall report, act and file Tax Returns (including Internal Revenue Service Form 8594) in all respects and for all purposes consistent with such allocation. Neither Buyer nor Seller shall take any position (whether in audits, Tax Returns or otherwise) which is inconsistent with such allocation; provided that nothing contained herein shall prevent Buyer or Seller from settling any proposed deficiency or adjustment by any Governmental Entity based upon or arising out of such allocation, and neither Buyer nor Seller shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Entity challenging the allocation.]

ARTICLE III SELLER'S REPRESENTATIONS AND WARRANTIES

Seller hereby represents and warrants to Buyer as of the date hereof and as of the Closing Date that, except as set forth in (a) the Company SEC Documents filed on or after January 1, 2024 and publicly available prior to the date hereof (other than any disclosures contained under the captions "Risk Factors" or "Forward-Looking Statements," and any other disclosures that are predictive, cautionary or forward-looking in nature but, for the purpose of clarification, including and giving effect to any factual or historical statements included in any such statements), and (b) the disclosure schedule accompanying this Agreement (the "Disclosure Schedule"), the statements contained in this Article III are true and correct.

Section 3.1 Organization of Seller; Good Standing.

(a) Seller is duly incorporated or organized, as applicable, validly existing and in good standing under the Laws of its state of incorporation and has all requisite corporate

power and authority, as applicable, to own, lease and operate its properties and assets and to carry on and conduct the business of Seller as currently conducted.

(b) Except as a result of the commencement of the Chapter 11, Seller is duly authorized to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of the Purchased Assets or the conduct of the business of Seller requires such qualification, and Seller does not engage in any activity, or own, lease or operate any properties such as to require it to qualify to do business in any other jurisdiction, in each case except for failures to be so authorized or be in such good standing, as would not, individually or in the aggregate, have a Material Adverse Effect.

(c) Schedule 3.1(c) of the Disclosure Schedule sets forth a true, complete and correct list of each jurisdiction in which Seller or any of its Subsidiaries is organized, and in which each is duly licensed or qualified to do business.

(d) Each of the Subsidiaries of each of Seller is set forth on Schedule 3.1(c) of the Disclosure Schedule. Except as set forth on Schedule 3.1(c) of the Disclosure Schedule, Seller does not own any Subsidiaries or shares of capital stock or other equity interests in any other Person.

Section 3.2 Authorization of Transaction.

(a) Subject to Bankruptcy Court approval, Seller has all requisite corporate power and authority to execute and deliver this Agreement and all Related Agreements to which it is a party and subject to entry and effectiveness of the Bidding Procedures Order and the Sale Order, to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and all Related Agreements to which Seller is a party have been duly authorized by Seller and no other corporate action on the part of Seller is necessary to authorize this Agreement or the Related Agreements to which it is party or to consummate the Contemplated Transactions.

(b) Subject to entry and effectiveness of the Bidding Procedures Order and the Sale Order, this Agreement has been duly and validly executed and delivered by Seller, and, upon its execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which Seller is a party will have been duly and validly executed and delivered by Seller. Assuming that this Agreement constitutes a valid and legally binding obligation of Buyer, this Agreement constitutes the valid and legally-binding obligations of Seller, enforceable against Seller in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. Assuming, to the extent that it is a party thereto, that each Related Agreement constitutes a valid and legally binding obligation of Buyer, each Related Agreement to which Seller is a party, when executed and delivered, constituted or will constitute the valid and legally-binding obligations of Seller, as applicable, enforceable against Seller in accordance with their respective terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.3 Noncontravention; Consents and Approvals.

(a) Neither the execution and delivery of this Agreement, nor the consummation of the Contemplated Transactions (including the Related Agreements), (i) will conflict with or result in a breach of the certificate of incorporation, certificate of formation, bylaws, operating agreement or other organizational documents of Seller, (ii) will result in the material violation of any Law to which Seller is, or its respective assets or properties are, subject, (iii) subject to the entry of the Sale Order, will conflict in any material respect with any Assumed Contract or Assumed Permit, or (iv) subject to and assuming entry of the Sale Order, will conflict in any material respect with, or result in any material violation of or constitute a material breach or default under, any Order of any Governmental Entity applicable to Seller or any of the Purchased Assets.

(b) No Consent, notice or filing is required to be obtained by Seller from, or to be given by Seller to, or made by Seller with, any Governmental Entity in connection with the execution, delivery and performance by Seller of this Agreement or any Related Agreement. After giving effect to the Bidding Procedures Order, the Sale Order and any applicable order of the Bankruptcy Court authorizing the assignment and assumption of any Contract that is an Assumed Contract hereunder, no Consent, notice or filing is required to be obtained by Seller from, or to be given by Seller to, or made by Seller with, any Person that is not a Governmental Entity in connection with the execution, delivery and performance by Seller of this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.4 Compliance with Laws. To Seller's Knowledge, Seller and all of the Purchased Assets are in compliance with all Laws applicable to the business of Seller or the Purchased Assets in all material respects. Seller has not received any notice of violation of any Law or Order with respect to Seller, the business of Seller or the Purchased Assets.

Section 3.5 Title to Purchased Assets. Seller, as of immediately prior to the Closing, has good and valid title to, or, in the case of leased assets, has valid and enforceable leasehold interests in (subject to the effect on enforceability of (a) any applicable Law relating to bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or preferential transfers, or similar Laws relating to or affecting creditors' rights generally and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law)), the Purchased Assets, free and clear of all Liens (except for Permitted Liens), subject to entry of the Sale Order. At the Closing or such time as title is conveyed under Section 2.6, Seller will convey, subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, good and valid title to, or valid leasehold interests in, all of the Purchased Assets, free and clear of all Liens (except for Permitted Liens), to the fullest extent permissible under section 363(f) of the Bankruptcy Code and subject to the rights of licensees under section 365(n) of the Bankruptcy Code. No Subsidiaries of Seller hold any assets, properties or rights, and no other Person is engaged in the operation of, or hold rights, title and interest in (except for Permitted Liens) the Purchased Assets.

Section 3.6 Contracts. For purposes of this Agreement, “Material Contract” means any Contract to which Seller is a party or by which Seller or any of its respective properties or assets is bound (in each case, excluding any Employee Benefit Plan) that is material to the use, ownership, possession, operation, management, business integration, sale, lease, development or commercialization of the Purchased Assets. All Material Contracts are listed on Schedule 3.6 of the Disclosure Schedule. Seller has not assigned, delegated or otherwise transferred to any third party any of its rights or obligations with respect to any Material Contract. Each Assumed Contract is valid and binding on Seller, and to Seller’s Knowledge, each other party thereto, and is in full force and effect, assuming entry of the Sale Order. To Seller’s Knowledge each Assumed Contract is, or will be upon the Closing, valid, binding on all parties thereto and in full force and effect in accordance with its terms.

Section 3.7 Intellectual Property.

(a) Schedule 3.7(a) of the Disclosure Schedule sets forth the following: (i) a complete list of all Intellectual Property (other than trade secrets and inventions) owned by Seller and for which a registration has been issued or application for such issuance and registration has been filed (“Owned Intellectual Property”), specifying, where applicable, the name of the record owner, the application, registration or serial or other similar identification number, assignment status (if applicable), the jurisdictions in which a registration has been issued or in which an application for such issuance and registration has been filed, including the respective registration or application numbers and the names of the Registered owner or applicant, as applicable, the date of filing or issuance and solely with respect to Internet domain names, the applicable registrar; (ii) all licenses, sublicenses and other agreements pursuant to which Seller is authorized to use any Intellectual Property owned or controlled by a third party including the identity of all Parties thereto and the type and date thereof, provided, however, that Seller need not list object code end-user licenses granted to end-users in the Ordinary Course of Business that permit use of software products without a right to modify, distribute or sublicense the same; and (iii) all licenses, sublicenses and other agreements (other than end-user licenses in the Ordinary Course of Business) pursuant to which Seller has granted or promised to grant to any third party any right to use any Intellectual Property, including the identity of all Parties thereto, a description of the nature and subject matter thereof, the applicable royalty and the term thereof.

(b) Title, Etc. Seller has good and valid right, title and interest in and to and is the sole and exclusive owner of (free and clear of any Liens except Permitted Liens) Owned Intellectual Property or has a license to use Intellectual Property owned by any third party that is required by Seller to conduct its business as currently conducted. To Seller’s Knowledge, all Intellectual Property included in the Owned Intellectual Property is unexpired and subsisting and properly recorded with the appropriate Governmental Entity, and no Owned Intellectual Property is subject to any outstanding order, judgment, determination, decree or agreement issued by or with any Governmental Entity adversely affecting Seller’s use of, or its rights, to such Owned Intellectual Property, and Seller has not received any written notice of any of the foregoing. There are no Proceedings outstanding or, to Seller’s Knowledge, threatened that seeks to challenge or limit Seller’s ownership of, or right to use or enforce any Owned Intellectual Property.

Section 3.8 Proceedings. Other than the Chapter 11 Case, Schedule 3.8 of the Disclosure Schedule sets forth all unresolved Proceedings brought by or against Seller, and to Seller's Knowledge, there are no other Proceedings threatened in writing against Seller.

Section 3.9 Real Property.

(a) Seller does not own any real property.

(b) Schedule 3.9(b) of the Disclosure Schedule sets forth the address of each Leased Real Property, and a true and complete list of all Leases that are Assumed Contracts (including the date and name of the Parties to such Lease document). Seller has made available to Buyer a true and complete copy of all Leases that are Assumed Contracts (including all amendments, extensions, renewals, guaranties and other agreements with respect thereto) for such Leased Real Property, as amended through the date hereof.

(c) The Leased Real Property and the Leasehold Improvements included in the Purchased Assets comprise all of the real property used in or otherwise related to the operation by Seller of, the business of Seller.

Section 3.10 Employment Matters.

(a) There are no and never have been any grievances or unfair labor practice complaints pending against Seller or any of its Subsidiaries before the National Labor Relations Board or any other Governmental Entity with respect to any employees of Seller.

(b) There is no, and for the past three years, has been no material employment or labor-related claim pending against Seller brought by or on behalf of any employee or any Governmental Entity and, to Seller's Knowledge, no such claim is threatened. Except as disclosed to Buyer confidentially, in the last three years, to Seller's Knowledge, there have been no allegations of sexual or other unlawful harassment or discrimination made on more than one occasion against (i) any officer of Seller or (ii) any managerial employee of Seller.

Section 3.11 Tangible Personal Property. Schedule 3.11 of the Disclosure Schedule sets forth all material Personal Property Leases, and each such material Personal Property Lease is valid and enforceable.

Section 3.12 Brokers' Fees. Seller has not entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated to pay.

Section 3.13 No Other Agreements to Purchase. Seller has not entered into any agreement with any other Person (written or oral) which grants such third party the right or option purchase or acquire from Seller any Purchased Asset.

Section 3.14 Permits. Seller owns, holds or lawfully uses (either directly or through its distributors) all authorizations and Permits which are necessary for the ownership, operation or use of the Purchased Assets or the conduct of the business of Seller required for development,

research, testing manufacturing, packaging, labeling, marketing, promotion, commercialization, clinical investigation, import, export, distribution, storage, or sale (collectively, the “Required Permits”).

Section 3.15 No Other Representations or Warranties. Except for the representations and warranties expressly contained in this Article III of this Agreement) (it being understood that Buyer has relied only on such express representations and warranties), Buyer acknowledges and agrees that neither Seller nor any other Person on behalf of Seller makes, and neither Buyer nor any other Person on behalf of Buyer has relied on, any other express or implied representation or warranty with respect to Seller, the Purchased Assets or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in any projections, any confidential information memorandum or similar document, or in any diligence materials, including in any dataroom or datasite or elsewhere) to Buyer or any of its Affiliates on behalf of Seller or any of its Affiliates. Without limiting the foregoing, except for fraud by any Person, neither Seller nor any other Person will have or be subject to any Liability whatsoever to Buyer, or any other Person, resulting from the distribution to Buyer or any of its Affiliates, or Buyer’s or any of its Affiliates’ use of or reliance on, any such information, including any information, statements, disclosures, documents, projections, forecasts or other material made available to Buyer or any of its Affiliates or any discussions with respect to any of the foregoing information.

ARTICLE IV BUYER’S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller as follows as of the date hereof and as of the Closing Date:

Section 4.1 Organization of Buyer. Buyer is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as now being conducted.

Section 4.2 Authorization of Transaction.

(a) Buyer has full corporate power and authority to execute and deliver this Agreement and all Related Agreements to which it is a party and to perform its obligations hereunder and thereunder.

(b) The execution, delivery and performance of this Agreement and all other Related Agreements to which Buyer is a party have been duly authorized by Buyer, and no other corporate action on the part of Buyer is necessary to authorize this Agreement or the Related Agreements to which it is a party or to consummate the Contemplated Transactions.

(c) This Agreement has been duly and validly executed and delivered by Buyer, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which Buyer is a party will have been duly and validly executed and delivered by Buyer. To the extent this Agreement constitutes a valid and

legally-binding obligation of Seller, this Agreement constitutes a valid and legally-binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. To the extent each Related Agreement constitutes a valid and legally-binding obligation of Seller party thereto, each Related Agreement to which Buyer is a party, when executed and delivered, constituted or will constitute the valid and legally-binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the Contemplated Transactions (including the assignments and assumptions referred to in Section 2.6) will (i) conflict with or result in a breach of the certificate of incorporation, bylaws, or other organizational documents, of Buyer, (ii) subject to any consents required to be obtained from any Governmental Entity, violate any Law to which Buyer is, or its assets or properties are subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations or rights as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair to the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Related Agreements. Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Entity in order for the Parties to consummate the transactions contemplated by this Agreement or any of the Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair to the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Related Agreements.

Section 4.4 Proceedings. There are no Proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer that will adversely affect Buyer's performance under this Agreement or the consummation of the transactions contemplated by this Agreement.

Section 4.5 Adequate Assurances Regarding Executory Contracts. As of the Closing, Buyer will be capable of satisfying as of the Sale Hearing the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts.

Section 4.6 Sufficiency of Funds. Buyer has, and will have at the Closing, sufficient funds in an aggregate amount necessary to pay the cash portion of the Purchase Price at the Closing (if any).

Section 4.7 Brokers' Fees. Neither Buyer nor any of its Affiliates has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated to pay.

ARTICLE V PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

Section 5.1 Notices and Consents.

(a) To the extent required by the Bankruptcy Code or the Bankruptcy Court, Seller shall give any notices to third parties, and Seller shall use its commercially reasonable efforts to obtain any third party Consents or sublicenses; provided, however, that neither Seller nor Buyer shall be required to incur any Liabilities or provide any financial accommodation, in order to obtain any such third party Consent with respect to the transfer or assignment of any Purchased Asset.

(b) Seller and Buyer shall cooperate with one another (i) in promptly determining whether any filings are required to be or should be made or consents, approvals, permits or authorizations are required to be or should be obtained under any applicable Law in connection with this Agreement and the Contemplated Transactions and (ii) in promptly making any such filings, furnishing information required in connection therewith and seeking to obtain timely any such consents, permits, authorizations, approvals or waivers; provided, however, that Seller's obligations hereunder shall only continue until the Chapter 11 Case is closed or dismissed and any actions taken by Seller hereunder that were requested in writing by Buyer following the Closing Date shall be at Buyer's sole cost and expense.

(c) To the extent permitted by applicable Law and the terms of the Purchased Assets, in the event any third party Consent has not been obtained by the Closing, at Buyer's request, the Party contemplated to be transferring such Purchased Asset under this Agreement (the "Transferring Party") shall hold in trust for Buyer, as applicable, the relevant Purchased Asset until the earlier of such time as (i) the third party Consent is obtained, (ii) the Chapter 11 Case is closed or dismissed or (iii) Buyer elects not to assume or otherwise receive or accept assignment or other transfer of such Purchased Asset. During such time period (and subject to the availability of funds for such purpose), Buyer shall comply with all applicable covenants and obligations under the Purchased Assets, including the payment of any costs or expenses in connection therewith. Buyer shall be entitled to receive all of the benefits of the Transferring Party under the Purchased Asset. Buyer shall satisfy all Liabilities with respect to such Purchased Assets until the earlier of such time as (i) the third party Consent is obtained, (ii) the Chapter 11 Case is closed or dismissed or (iii) Buyer elects not to assume such Purchased Asset.

(d) Subject to the terms and conditions set forth in this Agreement and applicable Law, Buyer and Seller shall (A) promptly notify the other Party of any communication to that Party from any Governmental Entity in respect of any filing, investigation or inquiry concerning this Agreement or the Contemplated Transactions, (B) if practicable, permit the other Party the opportunity to review in advance all the information relating to Seller and its Subsidiaries or Buyer and its Affiliates, as the case

may be, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the Agreement and the transactions contemplated by this Agreement and consider in good faith the other Party's reasonable comments, (C) not participate in any substantive meeting or discussion with any Governmental Entity in respect of any filing, investigation, or inquiry concerning this Agreement and the transactions contemplated by this Agreement unless it consults with the other Party in advance, and, to the extent permitted by such Governmental Entity, gives the other Party the opportunity to attend, and (D) furnish the other Party with copies of all correspondences, filings, and written communications between them and their Subsidiaries and Representatives, on the one hand, and any Governmental Entity or its respective staff, on the other hand, with respect to this Agreement and the transactions contemplated by this Agreement, provided, however, that any materials or information provided pursuant to any provision of this Section 5.1(d) may be redacted before being provided to the other Party (i) to remove references concerning the valuation of Buyer, Seller, or any of their Subsidiaries, (ii) financing arrangements, (iii) as necessary to comply with contractual arrangements, and (iv) as necessary to address reasonable privilege or confidentiality issues. Seller and Buyer may, as each deems advisable and necessary, reasonably designate any commercially or competitively sensitive material provided to the other under this Section 5.1(d) as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel and any retained consultants or experts of the recipient and shall not be disclosed by such outside counsel to employees, officers or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (Seller or Buyer, as the case may be). Each of Seller and Buyer shall promptly notify the other Party if such Party becomes aware that any third party has any objection to the Agreement on antitrust or anti-competitive grounds.

Section 5.2 Bankruptcy Actions.

(a) (i) Within five (5) days following the Petition Date, Seller shall file the Sale Motion; (ii) thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Bidding Procedures Order; and (iii) within sixty (60) days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order; subject to the satisfaction of all conditions to the obligations of Seller and Buyer as set forth in Article VII (other than conditions with respect to actions Seller and/or Buyer will take at the Closing itself, but subject to the satisfaction or waiver of those conditions). Seller and Buyer agree, and the Bidding Procedures Order shall reflect the fact that, the provisions of this Agreement are reasonable, were a material inducement to Buyer to enter into this Agreement and are designed to achieve the highest or best offer for the Purchased Assets.

(b) Seller shall provide Buyer with a reasonable opportunity to review and comment upon all motions, applications, and supporting papers relating to the transactions contemplated by this Agreement prepared by Seller or any Affiliates (including forms of orders and notices to interested Parties) prior to the Petition Date. All motions, applications, and supporting papers prepared by Seller and relating to the transactions contemplated by this Agreement to be filed on behalf of Seller after the date hereof shall be approved in form and substance by Buyer.

(c) Each of Buyer and Seller shall continue to act in good faith and without any improper conduct, including collusion or fraud of any kind.

(d) Each of Buyer and Seller shall promptly take such actions as are reasonably requested by the other party to assist in obtaining entry of the Sale Order and the Bidding Procedures Order, each in form and substance acceptable to Buyer, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by Seller of its obligations under this Agreement and the Related Agreements and demonstrating that Buyer is a good faith buyer under Section 363(m) of the Bankruptcy Code.

(e) Unless the Bankruptcy Court enters an order approving a private sale of the Purchased Assets to Buyer without a requirement to complete a public sale after competitive bidding, pursuant to the terms of the proposed Bidding Procedures Order, Seller shall, among other things, solicit bids from other prospective purchasers for the sale of all or substantially all of the Purchased Assets on terms and conditions substantially the same in all respects to this Agreement (or more favorable terms to Seller) and in accordance with the procedures set forth in the proposed Bidding Procedures Order, and Seller shall adhere to those procedures.

(f) Seller shall have provided timely and appropriate notice of the hearings on the Sale Motion to all Persons entitled to notice, including, but not limited to, all Persons that have asserted Liens in the Purchased Assets, all Parties to the Assumed Contracts and all Taxing authorities in jurisdictions applicable to Seller and as otherwise required by the Bankruptcy Code and bankruptcy rules.

(g) Seller shall have timely and appropriately served all parties in interest with all applicable notices in accordance with the Bidding Procedures Order, including service of cure notice(s) by first class mail on all non-debtor counterparties to all Non-Real Property Contracts and Leases as required by the Bidding Procedures Order and provide a copy of the same to Buyer.

(h) In connection with the Auction, and as set forth in the Bidding Procedures Order, Seller agrees to comply with the terms of the Bidding Procedures Order. To the extent so provided in the Bidding Procedures Order, no bidder or any other party shall be entitled to any termination or “break-up” fee, expense reimbursement, or any other bid protections in connection with the submission of a bid for any Purchased Assets, or for otherwise participating in the Auction or the sale process, unless otherwise agreed to by the Debtor and approved by an order of the Bankruptcy Court.

(i) Notwithstanding anything to the contrary contained in this Agreement, nothing in this Agreement shall require Seller or any director, manager, or officer of Seller (in such person’s capacity as a director, manager, or officer) to take any action, or to refrain from taking any action, to the extent that doing so would be with a violation of its fiduciary obligations under applicable law (as determined by it after consultation with outside legal counsel).

Section 5.3 Conduct of Business.

(a) Except as (i) required by applicable Law, (ii) required by order of the Bankruptcy Court or restricted pursuant to the Bankruptcy Code, the DIP Order or the DIP Loan Documents, as the case may be, or (iii) expressly required by this Agreement, during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VIII), unless Buyer otherwise consents in writing (such consent shall not be unreasonably withheld, conditioned or delayed), Seller shall (A) continue to operate its businesses and the Purchased Assets in compliance with all Laws, (B) use its commercially reasonable efforts to preserve substantially intact its goodwill and relationships with employees, suppliers, vendors, licensors, licensees, distributors, consultants, customers, and other Persons, in each case, having material relationships with Seller, (C) perform and comply in all material respects with the Collaboration Agreement, (D) use commercially reasonable efforts not to take, or agree to or commit to assist any other Person in taking, any action (x) that would reasonably be expected to result in a failure of any of the conditions to the Closing or (y) that would reasonably be expected to impair the ability of Seller or Buyer to consummate the Closing in accordance with the terms hereof or to materially delay such consummation, and (E) shall make all post-petition payments related to Assumed Contracts (other than Cure Amounts) that become or became due or payable pursuant to the terms thereof solely to the extent such payments are contemplated by, and funds have been allocated therefore, in the DIP Budget.

(b) Except as (i) required by applicable Law, (ii) required by order of the Bankruptcy Court or restricted pursuant to the Bankruptcy Code, the DIP Order or the DIP Loan Documents, as the case may be, (iii) expressly required by this Agreement, or (iv) expressly set forth in Schedule 5.3(b) of the Disclosure Schedule, and without limiting the generality of the restrictions set forth in Section 5.3(a), during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VIII), unless Buyer otherwise consents in writing (such consent shall not be unreasonably withheld, conditioned or delayed), Seller shall not do or take any of the following actions (whether by merger, operation of law or otherwise):

i. use any proceeds borrowed under the DIP Loan Agreement except as set forth in the DIP Budget (as the same may be updated from time to time in accordance with the DIP Loan Documents and subject to permitted variances under the DIP Loan Documents);

ii. (A) issue, sell, encumber or grant any shares of the capital stock or other equity or voting interests of Seller, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for any shares of such capital stock or other equity or voting interests, or any rights, warrants or options to purchase any shares of such capital stock or other equity or voting interests; other than the issuance or equity interests pursuant to any option, warrant or similar security that has been issued or granted prior to the date hereof; (B) redeem, purchase or otherwise acquire any of the outstanding shares of capital stock or other equity or voting interests of Seller, or any rights, warrants or options

to acquire any shares of such capital stock or other equity or voting interests, (C) establish a record date for, declare, set aside for payment or pay any dividend on, or make any other distribution in respect of, any shares of the capital stock or other equity or voting interests of Seller, or (D) split, combine, subdivide or reclassify any shares of the capital stock or other equity or voting interests of Seller;

iii. issue, incur, assume or otherwise become liable for (A) any indebtedness for borrowed money, (B) any notes, mortgages, bonds, debentures or other debt securities or warrants or other rights to acquire any notes, mortgages, bonds, debentures or other debt securities of Seller, (C) any letters of credit, security or performance bonds or similar credit support instruments or overdraft facilities or cash management programs of any Person, (D) any amounts owing as deferred purchase price for property or services, including any capital leases, seller notes and “earn out” payments, or other contingent payment obligations, or (E) any guarantee of any of the foregoing obligations of another Person, or any “keep well” or other agreement to maintain any financial statement condition of another Person (collectively, “Indebtedness”);

iv. sell, divest, distribute, assign, license, mortgage, pledge, encumber, transfer, lease or sublease to any Person, or otherwise dispose of, in a single transaction or series of related transactions, any of the Purchased Assets, except dispositions of Inventory in exchange for fair value in cash in the Ordinary Course of Business or to the extent permitted by the DIP Loan Documents;

v. enter into any commitment for, make or authorize capital expenditures, including for property, plant and equipment, except for those, if any, that are expressly contemplated by the DIP Budget;

vi. make any acquisition of, or investment in, or otherwise acquire, any properties, assets, securities, or business (including by merger, asset acquisition, equity purchase, or other transaction), except for any acquisition of Inventory in the Ordinary Course of Business in accordance with the DIP Budget;

vii. other than as required by applicable Law, as contemplated by the DIP Budget or as set forth on Schedule 5.3(b)vii of the Disclosure Schedule, (A) grant to any current or former director, officer, employee, contractor or other service provider of Seller any increase in compensation or benefits, (B) grant to any current or former director, officer, employee, contractor or other service provider of Seller any severance, retention, change in control, termination or similar compensation or benefits, (C) grant or amend any equity, equity-based or other incentive or similar awards, (D) other than as required by any Contract or Employee Benefit Plan as in effect as of the date of this Agreement and made available to Buyer, pay any amount to any current or former director, officer, employee, contractor or other service provider of Seller, (E) establish, adopt, enter into, materially amend or voluntarily terminate any Employee Benefit Plan or (F) take any action to accelerate or modify the vesting of, or payment of, any compensation or benefit, including under any Employee Benefit Plan;

viii. make any changes in financial accounting methods, principles, practices, procedures, or policies, except insofar as may be required by changes, after the date of this Agreement (A) in GAAP or (B) or any applicable Law, including Regulation S-X under the Securities Act;

ix. grant any Lien (other than Permitted Liens), on any assets, except to the extent permitted by the DIP Loan Documents;

x. (A) terminate, amend, supplement, modify or waive any provision of, fail to timely exercise any reserved right under, or accelerate any rights, benefits or obligations under, any Assumed Contract, except the expiration in accordance with its terms, (B) enter into any Contract that would have been a Material Contract if executed prior to the date of this Agreement; or (C) assume, reject or assign any (i) Contract that may become an Assumed Contract other than through the assumption and assignment of the Assumed Contracts, as contemplated by this Agreement, to Buyer, or (ii) Lease;

xi. solely to the extent the costs and expenses to comply with this Section 5.3(b)(xi) are provided for in the DIP Budget, (A) abandon, cancel, fail to renew, permit to lapse (1) any Owned Intellectual Property that is used in the conduct of the business of Seller or is otherwise material or (2) any Intellectual Property licensed by Seller to the extent that Seller has the right to take or cause to be taken such action pursuant to the terms of the applicable Contract under which such Intellectual Property is licensed to Seller, (B) sell, transfer, license, lease, sublease, pledge or otherwise encumber any Owned Intellectual Property or Intellectual Property that is licensed by Seller, other than non-exclusive licenses of Owned Intellectual Property granted to customers or vendors in the Ordinary Course of Business, or (C) disclose any trade secrets or confidential information other than pursuant to a written non-disclosure agreement;

xii. solely to the extent the costs and expenses to comply with this Section 5.3(b)(xii) are provided for in the DIP Budget, fail to use commercially reasonable efforts to renew and maintain the validity of their respective rights in, to or under any material Intellectual Property;

xiii. amend in any material respect, cancel or permit to terminate any material insurance policy naming Seller or a Subsidiary of Seller as an insured, a beneficiary or a loss payable payee without first obtaining comparable substitute insurance coverage with no lapse in coverage;

xiv. grant any material waiver under or materially amend or modify, or surrender, revoke, permit to lapse or otherwise terminate any Permit;

xv. (A) make, revoke or change any material Tax election or method of accounting with respect to Taxes, (B) file any Tax Return (other than in the Ordinary Course of Business and consistent with past practice and applicable Law) or amend any Tax Return, (C) enter into any closing agreement related to Taxes, or

(D) enter into any Tax allocation, sharing, indemnity or similar agreement or arrangement; and

xvi. authorize any of, or commit, agree or promise, in writing or otherwise, to take any of, the foregoing actions.

In addition, during the period from the date of this Agreement until Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VIII), Seller shall consult with Buyer prior to taking any of the following actions: waive, release, assign, institute, compromise, settle, or offer to do any of the foregoing, with respect to any pending or threatened Proceedings related to Seller, the Purchased Assets, the Assumed Liabilities or the Material Contracts, other than as required by order of the Bankruptcy Court or restricted pursuant to the Bankruptcy Code, the DIP Order or the DIP Loan Documents, as the case may be.

It is understood and agreed that certain actions may be contemplated by one or more provisions of this Section 5.3, and, in such event, such action may only be taken (or omitted to be taken) if so permitted by each such provision of this Section 5.3. Nothing contained in this Agreement is intended to give Buyer or its Affiliates, directly or indirectly, the right to control or direct any of Seller's or its Subsidiaries' operations or business prior to the Closing, and nothing contained in this Agreement is intended to give Seller, directly or indirectly, the right to control or direct Buyer's or its Subsidiaries' operations. Prior to the Closing, each of Buyer and Seller shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

Section 5.4 Notice of Developments. From the date hereof until the Closing Date, Seller shall promptly disclose to Buyer, on the one hand, and Buyer shall promptly disclose to Seller in writing (in the form of an updated Disclosure Schedule, if applicable) after attaining knowledge (as applicable to each of Seller and Buyer) of any real or alleged failure of Seller or Buyer, as the case may be, to comply with or satisfy any of their respective covenants, conditions or agreements to be complied with or satisfied by it under this Agreement in any material respect; provided, however, that the delivery of any notice pursuant to this Section 5.4 shall not limit or otherwise affect the remedies available to the party receiving such notice under this Agreement.

Section 5.5 Access. Upon reasonable advance written request by Buyer, Seller shall permit Buyer and its Representatives to have reasonable access to, and make reasonable investigation of, during normal business hours, subject to the terms of Leases and in a manner so as not to interfere unreasonably with the normal business operations of Seller, to all of the books and records, premises, properties, personnel, Records, Contracts, businesses, assets, accountants, auditors, counsel and operations of Seller; provided, however, that, for the avoidance of doubt, the foregoing shall not require any Party to waive, or take any action with the effect of waiving, its attorney-client privilege or any confidentiality obligation to which it is bound with respect thereto or take any action in violation of applicable Law. Seller shall cause its officers, employees, consultants, agents, accountants, attorneys and other representatives to cooperate with Buyer and Buyer's Representatives in connection with such investigation and examination, and Buyer and its Representatives shall cooperate with Seller and its Representatives and shall use their reasonable efforts to minimize any disruption to the business of Seller.

Section 5.6 Press Releases and Public Announcements. Other than statements made in the Bankruptcy Court (or in pleadings filed therein), no Party shall issue (prior to, on or after the Closing) any press release or make any public statement or public communication without the prior written consent of the other Parties, which shall not be unreasonably withheld or delayed; provided, however, that (i) Seller, without the prior consent of Buyer, may (A) make any such public announcement in connection with the Auction after having provided Buyer at least one (1) Business Day to review and comment on such release or announcement (which comments shall be reasonably considered by Seller) and (B) communicate with its and its Affiliates' investors and potential investors relating to the transactions contemplated by this Agreement. Notwithstanding anything to the contrary in this Section 5.6, nothing shall preclude and claims or noticing agent engaged in the Chapter 11 Case from posting this Agreement for access to Seller's creditors and other stakeholders or as required by applicable Law to be filed by Seller with, or otherwise furnished by Seller to (as applicable), the SEC.

Section 5.7 Bulk Transfer Laws. Buyer acknowledges that Seller will not comply with the provisions of any bulk transfer Laws of any jurisdiction in connection with the transactions contemplated by this Agreement, and hereby waives all claims related to the non-compliance therewith. The Parties intend that pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any Liens on the Purchased Assets (other than Permitted Liens), including any Liens arising out of the bulk transfer Laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order.

Section 5.8 Seller's Obligation to Inform Buyer of Material Developments. From the date of this Agreement until the Closing Date, Seller shall: (a) promptly notify Buyer of any regulatory interactions or correspondence with any Governmental Entity, including but not limited to the FDA or similar authorities, relating to any of the Purchased Assets; (b) to the extent permitted by applicable Law or any binding contractual obligations, provide Buyer with copies of all material correspondence, meeting minutes, or other communications with any such Governmental Entity; and (c) notify the Buyer immediately of any material safety developments, adverse events, or other matters that may reasonably be expected to impact the safety profile, clinical viability, or regulatory pathway of any of the Purchased Assets.

ARTICLE VI OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing:

Section 6.1 Cooperation. Each of the Parties shall cooperate with each other, and shall use their commercially reasonable efforts to cause their respective Representatives to cooperate with each other, to provide an orderly transition of the Purchased Assets and Assumed Liabilities from Seller to Buyer and to minimize the disruption to the business of Seller resulting from the Contemplated Transactions.

Section 6.2 Further Assurances. In case at any time from and after the Closing any further action is necessary or reasonably required to carry out the purposes of this Agreement, subject to the terms and conditions of this Agreement and the terms and conditions of the Sale Order, at any Party's request and sole cost and expense, each Party shall take such further action

(including the execution and delivery to any other Party of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation and providing materials and information) as another Party may reasonably request as shall be necessary to transfer, convey and assign to Buyer all of the Purchased Assets, to confirm Buyer's assumption of the Assumed Liabilities and to confirm Seller's retention of the Excluded Assets and Excluded Liabilities. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Seller discovers any additional assets or properties which the Parties mutually agree should have been transferred or assigned to Buyer as Purchased Assets but were not so transferred or assigned, Buyer and Seller shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Buyer; provided that any actions to be taken by Seller under this Section 6.2 shall be at Buyer's sole cost and expense.

Section 6.3 Availability of Business Records. From and after the Closing until the earlier of (x) the termination of the Seller or (y) 12 months after the Closing, Buyer shall provide to Seller and its Representatives (after reasonable notice and during normal business hours and without charge to Seller) reasonable access to all Records included in the Purchased Assets for periods prior to the Closing and reasonable access to Transferred Employees to the extent such access is necessary in order for Seller (as applicable) to comply with applicable Law or any contract to which it is a party, for liquidation, winding up, Tax reporting or other proper purposes and so long as such access is subject to an obligation of confidentiality, and shall preserve such Records. Such access shall include access to any information in electronic form to the extent reasonably available.

Section 6.4 Employee Matters.

(a) Promptly following the date hereof, Seller will provide a complete and correct list of all Current Employees by: name; title or position; status (part-time, full-time, exempt, or non-exempt); whether paid on a salaried, hourly or other basis; current base salary or wage rate; current target bonus; commission structure; start date; service reference date (if different from the start date); work location; accrued paid time off; and an indication of whether or not such employee is on leave of absence (the "Employee Roster"). Within twenty (20) days prior to Closing (or on such other timeline as agreed by the Parties) Seller will update the Employee Roster described in the preceding sentence. At least five (5) days prior to the Closing, Buyer will identify the employees (or corresponding positions) on the Employee Roster to whom Buyer intends make an offer of employment. Prior to Closing, Buyer shall offer employment to the selected employees (an "Offeree") to the extent such employee is an employee of Seller and remains employed by Seller immediately prior to the Closing on employment terms as Buyer may determine in its sole discretion.

(b) Each Offeree of Seller who accept offers for employment with Buyer prior to the Closing shall be referred to herein as a "Transferred Employee." Effective as of the Closing, Seller shall terminate the employment of all Transferred Employees and provide such employees with written notice of termination. Seller shall be solely responsible for and shall pay to each Transferred Employee any Liability for compensation (base, variable and any other compensation), severance, accrued vacation, deferred compensation, incentive bonuses, sick leave or similar benefits with respect to such Transferred Employee

attributable to periods of employment or service of such Transferred Employee with Seller prior to the Closing Date. Seller shall not be responsible for and shall not be liable to pay to any Transferred Employee any Liability for compensation (base, variable and any other compensation), severance, accrued vacation, deferred compensation, incentive bonuses, sick leave or similar benefits accrued by such Transferred Employee following the Closing Date related to the Transferred Employee's employment or service with Buyer. Each Offeree of Seller who is not a Transferred Employee shall be referred to herein as an "Excluded Employee."

(c) Following the date of this Agreement:

i. Seller will allow Buyer or any of its Representatives reasonable access upon reasonable advance notice to meet with and interview the individuals listed on the Employee Roster described in Section 6.4(a) above, other than any executive officers listed thereon, during normal business hours;

ii. Seller shall provide reasonable cooperation and information to Buyer or the relevant Representative as reasonably requested by Buyer or such Representative with respect to its determination of terms and conditions of employment for any Offeree;

iii. Seller shall process the payroll for and pay, or cause to be paid, the base wages, base salary and benefits that are due and payable prior to the Closing Date with respect to all employees of Seller. Seller shall withhold and remit all applicable payroll taxes as required by Law prior to the Closing Date with respect to all employees of Seller as of such date;

iv. For the sake of clarity Buyer does not assume any Liability with respect to Excluded Employees, including for paying any accrued wages, paid time off or other accrued compensation obligations of Excluded Employees; and

v. Notwithstanding anything set forth herein to the contrary, prior to the conclusion of the Auction Seller shall permit reasonable access to executive officers consistent with the access provided to other potential bidders for purposes of discussing continued employment.

(d) Nothing in this Section 6.4 shall be construed as requiring, and neither Seller nor any of their Affiliates shall take any affirmative action that would have the effect of requiring Buyer to continue any specific employee benefit plan or to continue the employment of any specific person. Nothing in this Agreement is intended to establish, create or amend, nor shall anything in this Agreement be construed as establishing, creating or amending, any employee benefit plan, practice or program of Buyer, any of its Affiliates or any of Seller's Employee Benefit Plans, nor shall anything in this Agreement create or be construed as creating any contract of employment or as conferring upon any Current Employee, Transferred Employee or upon any other person, other than the Parties to this Agreement in accordance with its terms, any rights to enforce any provisions of this Agreement under ERISA or otherwise.

Section 6.5 Transfer Taxes. To the extent not exempt under Section 1146 of the Bankruptcy Code, Buyer shall pay all Transfer Taxes. Seller and Buyer shall cooperate to prepare and timely file any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence.

Section 6.6 Insurance Policies. From and after the Closing, Buyer shall have the right to make claims and the right to any proceeds with respect to any matter related to the Assumed Liabilities under any insurance policies for occurrence-based claims pertaining to, arising out of, and inuring to the benefit of Seller for all periods prior to the Closing, and Seller shall use commercially reasonable efforts to seek recovery or allow Buyer to seek recovery (including by executing or delivering any document, agreement, instrument or other information as Buyer may request to seek such recovery) under such insurance policies, and Seller shall at Buyer's sole cost and expense cooperate with all of Buyer's reasonable requests if it seeks recovery, with respect to such matters and shall remit (or, at Buyer's request, direct any such insurer to pay directly to Buyer) any insurance proceeds actually obtained therefrom (net of Seller's reasonable and documented out-of-pocket costs and expenses of seeking such recovery, to the extent not otherwise paid or reimbursed by Buyer) to Buyer or its designee.

Section 6.7 Receipt of Misdirected Assets. From and after the Closing, if Seller or any Affiliate thereof receives, or becomes aware that it holds, any right, property or asset that is a Purchased Asset, Seller shall promptly transfer or cause such of its Affiliates to transfer (without cost to Buyer) such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Buyer or its designee, and such asset will be deemed the property of Buyer or its designee held in trust by Seller for Buyer until so transferred. From and after the Closing, if Buyer or any of its Affiliates receives, or becomes aware that it holds, any right, property or asset that is an Excluded Asset, Buyer shall promptly transfer or cause such of its Affiliates to transfer (without cost to Seller) such asset (and shall promptly endorse and deliver any such right, property or asset that is received in the form of cash, checks or other documents) to Seller, and such asset will be deemed the property of Seller or its designee held in trust by Buyer for Seller until so transferred.

Section 6.8 No Successor Liability. The Parties intend that, to the fullest extent permitted by applicable Law (including under Section 363 of the Bankruptcy Code), upon the Closing, Buyer shall not be deemed to: (a) be the successor of Seller, (b) have, *de facto* or otherwise, merged with or into Seller, (c) be a mere continuation or substantial continuation of Seller or the enterprise(s) of Seller or (d) be liable or have any Liability for any acts or omissions of Seller in the conduct of their businesses or arising under or related to the Purchased Assets other than as expressly set forth and agreed in this Agreement. Without limiting the generality of the foregoing, and except as otherwise expressly provided in this Agreement, the Parties intend that Buyer shall have no Liability for any Lien (other than the Assumed Liabilities and Permitted Liens on the Purchased Assets) against Seller or any of Seller's predecessors or Affiliates, and Buyer shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date or in connection with the transactions contemplated to occur on the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the businesses of Seller, the Purchased Assets or any Liability of Seller arising prior to, or relating to any period occurring prior to, the Closing Date.

Section 6.9 Release of Claims.

(a) Effective as of the Closing, Seller for itself and on behalf of its past, present and future controlled Affiliates and its and such Affiliates' Representatives hereby fully, irrevocably and unconditionally release, discharge, and forever waive and relinquish of any and all claims, actions, refunds, causes of action, choses in action, actions, suits or proceedings, rights of recovery, rights of setoff, rights of recoupment, rights of indemnity or contribution and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against Buyer and its respective current and former officers, directors, stockholders, employees, agents, representatives, attorneys, investors, parents, predecessors, subsidiaries, successors, assigns, and affiliates, each of the foregoing in their capacity as such (individually and collectively, the "Buyer Released Parties"), from all actions, causes of action, damages, claims, and demands whatsoever, in law or in equity, known or unknown, contingent or liquidated, whether direct claims or for indemnification or contribution, that Seller ever had, now has, or may have against the Buyer Released Parties in connection with any event, conduct or circumstance occurring prior to the Closing, except, in each case, with respect to (i) any rights of Seller under this Agreement, any of the Related Agreements, any of the DIP Loan Documents or any other agreement between the Parties entered after the date hereof, and (ii) fraud, gross negligence or willful misconduct of the Buyer Released Parties. The foregoing release shall only be effective following approval by a Final Order of the Bankruptcy Court.

(b) Effective as of the Closing, Buyer for itself and on behalf of its past, present and future controlled Affiliates and its and such Affiliates' Representatives hereby fully, irrevocably and unconditionally release, discharge, and forever waive and relinquish of any and all claims, actions, refunds, causes of action, choses in action, actions, suits or proceedings, rights of recovery, rights of setoff, rights of recoupment, rights of indemnity or contribution and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against Seller and its respective current and former officers, directors, stockholders, employees, agents, representatives, attorneys, investors, parents, predecessors, subsidiaries, successors, assigns, and affiliates, each of the foregoing in their capacity as such (individually and collectively, the "Seller Released Parties"), from all actions, causes of action, damages, claims, and demands whatsoever, in law or in equity, known or unknown, contingent or liquidated, whether direct claims or for indemnification or contribution, that Buyer ever had, now has, or may have against the Seller Released Parties in connection with any event, conduct or circumstance occurring prior to the Closing, except, in each case, with respect to (i) any rights of Buyer under this Agreement, any of the Related Agreements, any of the DIP Loan Documents or any other agreement between the Parties entered after the date hereof, and (ii) fraud, gross negligence or willful misconduct of the Seller Released Parties. The foregoing release shall only be effective following approval by a Final Order of the Bankruptcy Court.

Section 6.10 COBRA. Seller will be solely responsible for complying with the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code for any individual whose employment with Seller or any of its Affiliates terminates on or prior to the

Closing Date and who is an “M&A qualified beneficiary” as defined in Treas. Reg. Sec. 54.4980B-9 (A-4).

Section 6.11 Tax Reporting. Buyer and Seller agree to utilize, or cause their respective Affiliates to utilize, the “[standard] procedure” set forth in Revenue Procedure 2004-53, 2004-34 I.R.B. 320 (Aug. 18, 2004) for wage reporting with respect to any employees of Seller and its Affiliates who become employees of Buyer or its Affiliates.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.1 Conditions to Buyer’s Obligations.

Subject to Section 7.3, Buyer’s obligation to consummate the Contemplated Transactions in connection with the Closing is subject to satisfaction or written waiver of the following conditions (any or all of which may be waived in writing by Seller and Buyer in whole or in part to the extent permitted by applicable Law):

(a) as of the date hereof and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 3.1, Section 3.2 or Section 3.3 shall be true and correct in all material respects, and (ii) each other representation or warranty set forth in Article III shall be true and correct in all respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, has not had, and would not reasonably be expected to have, a Material Adverse Effect;

(b) Seller shall have performed and complied with its covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Seller shall have caused the documents and instruments required by Section 2.8(a) to be delivered to Buyer (or tendered subject only to Closing);

(c) no Material Adverse Effect shall have occurred;

(d) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Order that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(e) Buyer shall have been deemed the Successful Bidder (as such term is defined in the Bidding Procedures Order) for the Purchased Assets at any Auction;

(f) the Sale Order shall have been entered by the Bankruptcy Court and shall have become a Final Order;

(g) (i) no default or Event of Default (in each case as such term is defined in the DIP Loan Agreement) shall have occurred and be continuing under the DIP Loan Agreement arising from the appointment of an examiner with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code or a trustee or the Chapter 11 Case is dismissed

or converted to a case under Chapter 7 under the Bankruptcy Code; and (ii) no other default or Event of Default shall have occurred and be continuing under the DIP Loan Agreement under circumstances where, on or prior to the date of such other default or Event of Default, there shall have been Fraud or a Willful Breach committed by Seller under or in respect of the DIP Loan Agreement;

(h) the DIP Order and DIP Loan Documents shall have been approved and shall not have been terminated;

(i) the Collaboration Agreement shall remain in full force and effect; and

(j) Seller shall have delivered a certificate from an authorized officer of Seller to the effect that each of the conditions specified in Section 7.1(a), Section 7.1(b) and Section 7.1(c) have been satisfied.

Section 7.2 Conditions to Seller's Obligations. Subject to Section 7.3, Seller's obligation to consummate the Contemplated Transactions in connection with the Closing are subject to satisfaction or written waiver of the following conditions (any or all of which may be waived in writing by Seller and Buyer in whole or in part to the extent permitted by applicable Law):

(a) as of the date hereof and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 4.1, Section 4.2 or Section 4.3 shall be true and correct in all material respects, and (ii) each other representation or warranty set forth in Article IV shall be true and correct in all material respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, would not reasonably be expected to materially prevent, restrict or delay the consummation of the Contemplated Transactions or by any Related Agreement;

(b) Buyer shall have performed and complied with its covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Buyer shall have caused the documents, instruments and payments required by Section 2.8(b) to be delivered to Seller (or tendered subject only to Closing);

(c) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Order that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(d) the Sale Order shall have been entered by the Bankruptcy Court and shall have become a Final Order; and

(e) Buyer shall have delivered a certificate from an authorized officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) have been satisfied.

Section 7.3 No Frustration of Closing Conditions. Neither Buyer nor Seller may rely on the failure of any condition to its obligation to consummate the Contemplated Transactions set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's failure to use its commercially reasonable efforts with respect to those matters contemplated by the applicable Sections of this Agreement to satisfy the conditions to the consummation of the Contemplated Transactions or other breach of a representation, warranty or covenant hereunder.

Section 7.4 Closing Efforts. Subject to, and in accordance with, (i) the terms and conditions of this Agreement, (ii) applicable Law and (iii) any requirements, conditions or other Proceedings of the Bankruptcy Court, each of the Parties shall use its reasonable best efforts to take promptly all actions and to do all things necessary, proper or advisable to satisfy the conditions to the other Party's obligations set forth herein and to consummate the Contemplated Transactions.

Section 7.5 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in this Article VII that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing.

ARTICLE VIII TERMINATION

Section 8.1 Termination of Agreement. This Agreement may be terminated in accordance with this Article VIII and the Contemplated Transactions abandoned at any time prior to the Closing (each a "Termination Event"):

(a) by the mutual written consent of Buyer, on the one hand, and Seller, on the other hand;

(b) by written notice of either Buyer or Seller, if there shall be any Law that makes consummation of the Contemplated Transactions illegal or otherwise prohibited, or upon the issuance by any Governmental Entity of an Order restraining, enjoining, or otherwise prohibiting the consummation of the Contemplated Transactions or declaring unlawful the Contemplated Transactions, and such Order having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Order was caused by the breach or action or inaction of such Party;

(c) by written notice of either Buyer or Seller, if the Closing shall not have occurred on or before the Outside Date;

(d) by written notice of either Buyer or Seller, if the Chapter 11 Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs or reorganization of Seller is appointed in the Chapter 11 Case;

(e) by Buyer, if (i) the Bidding Procedures Order shall not have been entered by the Bankruptcy Court on or before the thirtieth (30th) calendar day after the Petition

Date, (ii) the Auction has not concluded on or before the fifty-fifth (55th) calendar day after the Petition Date of Seller, (iii) the Sale Order shall not have been entered by the Bankruptcy Court on or before the sixtieth (60th) calendar day after the Petition Date of Seller, (iv) at any time after entry of the Bidding Procedures Order, such Bidding Procedures Order (including, without limitation, the provisions therein relating to the bid protections) is reversed, stayed, vacated or otherwise modified by the Bankruptcy Court, or (v) at any time after entry of the Sale Order, such Sale Order is reversed, stayed, vacated or otherwise modified, unless waived by the Seller;

(f) by Buyer by giving written notice to Seller at any time prior to Closing in the event Seller has breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Sections 7.1(a) and 7.1(b) hereof, as the case may be, would not then be satisfied at the time of such breach, Buyer has notified Seller of the breach, and the breach has continued without cure for twenty (20) days;

(g) by Seller by giving written notice to Buyer at any time prior to Closing in the event Buyer has breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Sections 7.2(a) and 7.2(b) hereof, as the case may be, would not then be satisfied at the time of such breach, Seller has notified Buyer of the breach, and the breach has continued without cure for twenty (20) days;

(h) by written notice from Seller to Buyer, if all of the conditions set forth in Section 7.1 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and Buyer fails to complete the Closing at the time required by Section 2.7;

(i) by written notice from Buyer to Seller upon (i) acceleration of the DIP Facility and exercise of remedies as set forth in the DIP Loan Agreement and DIP Order by the DIP Lender; or (ii) appointment of an examiner with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code or a trustee or the Chapter 11 Case is dismissed or converted to a case under Chapter 7 under the Bankruptcy Code ;

(j) Reserved.

(k) by Buyer if any creditor of Seller obtains relief from the stay to foreclose on a material portion of the Purchased Assets; or

(l) automatically and without any action or notice by Seller to Buyer, or Buyer to Seller, immediately upon:

i. approval by the Bankruptcy Court of an Alternate Transaction, unless Buyer has agreed to be a “back-up bidder” under the Bidding Procedures Order (and, for the avoidance of doubt, in no event shall Buyer be required to be a “back-up bidder”); or

ii. the consummation of an Alternate Transaction.

Notwithstanding anything to the contrary contained herein, (i) in no event may Buyer terminate this Agreement under Section 8.1(f) on account of Buyer's failure to satisfy the conditions contained in Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to any proposed Assumed Contract, (ii) a Party shall not be permitted to terminate this Agreement pursuant to this Article VIII if the applicable Termination Event was caused by the breach of such Party or such Party's gross negligence, willful misconduct, or bad faith or such Party is in material breach of any covenant, representation or warranty hereunder such that the conditions in Section 7.1(a)-(b) or Section 7.2(a)-(b), as applicable, would fail to be satisfied at the Closing and (iii) if Buyer elects to be a "back-up bidder" then this Agreement shall not terminate pursuant to Section 8.1(l) until the earlier of (x) closing of the Alternate Transaction and (y) thirty (30) days following the completion of the Auction.

Section 8.2 Procedure Upon Termination. In the event of termination and abandonment by Buyer, on the one hand, or Seller, on the other hand, or both, pursuant to Section 8.1, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate and the Contemplated Transactions shall be abandoned, without further action by Buyer or Seller.

Section 8.3 Bid Protections

(a) Seller shall immediately pay to Buyer the Bid Protections upon termination of this Agreement pursuant to Section 8.1(f) or Section 8.1(i).

(b) Seller's obligation to pay the Bid Protections pursuant to this Section 8.3 shall be subject to Bankruptcy Court approval and shall survive termination of this Agreement and shall constitute an administrative expense of Seller under section 503(b) of the Bankruptcy Code.

(c) Seller acknowledges and agrees that (i) the payment of the Bid Protections is an integral part of the transactions contemplated by this Agreement, (ii) in the absence of Seller's obligations to make this payment, Buyer would not have entered into this Agreement, and (iii) time is of the essence with respect to the payment of the Bid Protections.

(d) The Parties further acknowledge that the damages resulting from termination of this Agreement under circumstances where Buyer is entitled to the Bid Protections are uncertain and incapable of accurate calculation and that the delivery of the Bid Protections to Buyer is not a penalty but rather shall constitute liquidated damages in a reasonable amount that will compensate Buyer in the circumstances where Buyer is entitled to the Bid Protections for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Contemplated Transactions, and that, without these agreements, Buyer would not enter into this Agreement.

(e) Notwithstanding anything to the contrary in this Agreement, but subject to Section 8.4, and except in the event of Willful Breach of this Agreement by Seller, the Bid

Protections shall be the sole and exclusive remedy of Buyer upon a termination of this Agreement under circumstances where Buyer is entitled to the Bid Protections.

Section 8.4 Effect of Termination. In the event that this Agreement is validly terminated pursuant to a right of termination as provided herein, then each of the Parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without Liability to Buyer or Seller; provided, however, that Section 8.1, Section 8.2, Section 8.3, this Section 8.4, Article IX and the Bidding Procedures Order (if entered) shall survive any such termination and shall be enforceable hereunder. In no event shall any termination relieve any Party from any Liability from any Willful Breach of this Agreement prior to the date of such termination or from any Proceeding by Buyer or its Affiliates related to or arising out of Fraud. “Willful Breach” means a material breach of this Agreement or the DIP Loan Agreement, as applicable, that is a consequence of an intentional act or intentional failure to act with the actual knowledge that the taking of the act or failure to act would result in a material breach of this Agreement or the DIP Loan Agreement, respectively.

ARTICLE IX MISCELLANEOUS

Section 9.1 Remedies. The Parties recognize that if a Party breaches or refuses to perform any of their covenants set forth in this Agreement, monetary damages alone would not be adequate to compensate the non-breaching Party for their injuries. The non-breaching Party shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of, or to enjoin the violation of, the terms of such covenants. If any Proceedings are brought by the non-breaching Party to enforce such covenants, the breaching Party shall waive the defense that there is an adequate remedy at Law. The Parties agree to waive any requirement for the security or posting of any bond in connection with any Proceeding seeking specific performance of, or to enjoin the violation of, such covenants.

Section 9.2 Expenses. Except as otherwise provided in this Agreement, the DIP Order, the DIP Loan Documents or a Related Agreement, Seller and Buyer shall bear their own expenses, including attorneys’ fees, incurred in connection with the negotiation and execution of this Agreement, the Related Agreements and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Contemplated Transactions. Notwithstanding anything set forth in this Agreement to the contrary, to the extent Buyer requests in writing that Seller take any action after Closing pursuant to this Agreement, such action will be done at Buyer’s sole cost and expense.

Section 9.3 Entire Agreement. This Agreement (including the schedules and exhibits hereto and other documents specifically referred to herein) and the Related Agreements constitute the entire agreement among the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or among the Parties, written or oral, with respect to the subject matter hereof.

Section 9.4 Incorporation of Schedules, Exhibits and Disclosure Schedule. The schedules, appendices and exhibits to this Agreement, the documents and other information made available in the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of all Parties; provided, however, that Buyer shall be permitted to assign any of its rights hereunder to one or more of its Affiliates, as designated by Buyer in writing to Seller.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid; or (d) when sent by email (with written confirmation of transmission), and addressed to the intended recipient as set forth below; provided that, any notices, requests, demands, claims and other communications hereunder given pursuant to subclauses (a)-(c) must also be simultaneously given by email pursuant to subclause (d):

If to Seller, then to:

Omega Therapeutics, Inc.
 140 First Street, Suite 501
 Cambridge, MA 02141
 Attention: Kaan Certel
 Barbara Chan
 Email: kcertel@omegatx.com
 bchan@omegatx.com

with a copy to:

Morris, Nichols, Arsht & Tunnell LLP
1201 N Market St # 1600, Wilmington, DE 19801
Wilmington, DE 19801
Attention: Tarik Haskins
Derek Abbott
Email: thaskins@morrisnichols.com
DAbbott@morrisnichols.com

If to Buyer, then to:

Pioneering Medicines 08-B, Inc.
c/o FLAGSHIP PIONEERING
55 Cambridge Parkway, 8th Floor
Cambridge, MA 02142
Attention: Charles Carelli
Email: legalnotices@flagshipioneering.com

with copies (which shall not constitute notice) to:

Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Attention: Stuart M. Cable
Kizzy Jarashow
Barry Bazian
Robert Dzialo
Email: SCable@goodwinlaw.com
KJarashow@goodwinlaw.com
BBazian@goodwinlaw.com
RDzialo@goodwinlaw.com

Any Party may change the mailing address or email address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Party notice in the manner set forth in this Section 9.7.

Section 9.8 Governing Law; Jurisdiction. This Agreement shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the Parties shall be determined in accordance with such Laws. The Parties agree that any Proceeding one Party commences against any other Party pursuant to this Agreement shall be brought exclusively in the Bankruptcy Court and each of the Parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it

may now or hereafter have to the laying of the venue of any such suit, action or proceeding in the Bankruptcy Court or that any such suit, action or proceeding which is brought in the Bankruptcy Court has been brought in an inconvenient forum; provided that if the Bankruptcy Court is unwilling or unable to hear any such Proceeding, then the courts of the State of Delaware, sitting in New Castle County, Delaware, and the federal courts of the United States of America sitting in New Castle County, Delaware, shall have exclusive jurisdiction over such Proceeding.

Section 9.9 Consent to Service of Process. Each of the Parties hereby consents to process being served by any Party, respectively, in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.7.

Section 9.10 WAIVERS OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS.

Section 9.11 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement so long as the economic or legal substance of the Contemplated Transactions is not affected in a manner adverse to any Party. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) the Parties shall negotiate in good faith to find a suitable and equitable provision that shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability in any one jurisdiction affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 9.12 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

Section 9.13 No Survival of Representations, Warranties and Agreements. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such party prior to the Closing) of the Parties set forth in this Agreement or in any other Related Agreement, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, then for one (1) year following the Closing Date, and nothing in this Section 9.13 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Buyer and Seller acknowledge and agree, on their own behalf and, with respect to Buyer that the agreements contained in this Section 9.13

are an integral part of the Contemplated Transactions and that, without the agreements set forth in this Section 9.13, none of the Parties would enter into this Agreement.

Section 9.14 Non-Recourse. This Agreement may only be enforced against, and any Proceeding based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or representative of any party to this Agreement will have any Liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or Liabilities of any of the parties to this Agreement or for any Proceeding based upon, arising out of or related to this Agreement.

Section 9.15 Construction. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa. The word “including” and “include” and other words of similar import shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereto” and “hereby,” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision of this Agreement. Unless expressly stated in connection therewith or the context otherwise requires, the phrase “relating to the business” and other words of similar import shall be deemed to mean “relating to the operation of the business of Seller as conducted as of the date hereof.” Except as otherwise provided herein, references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Exhibits, Appendices and the Disclosure Schedule herein are references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Appendices, Exhibits and the Disclosure Schedule of this Agreement. Any reference herein to any Law (or any provision thereof) shall include such Law (or any provision thereof) and any rule or regulation promulgated thereunder, in each case, including any successor thereto, and as it may be amended, modified or supplemented from time to time. Any reference herein to “dollars” or “\$” means United States dollars.

Section 9.16 Computation of Time. In computing any period of time prescribed by or allowed with respect to any provision of this Agreement that relates to Seller or the Chapter 11 Case, the provisions of Rule 9006(a) of the Federal Rules of Bankruptcy Procedure shall apply.

Section 9.17 Mutual Drafting. Each of the Parties has participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.18 Disclosure Schedule. The Disclosure Schedule has been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement; provided, however, that each section of the Disclosure Schedule will be deemed to incorporate by reference all information disclosed in any other section of the Schedules, and any disclosure in the Disclosure Schedule will be deemed a disclosure against any representation or

warranty set forth in this Agreement if the purpose for disclosure in such other section of the Schedules or again any other representation or warranty is reasonably apparent on its face. Capitalized terms used in the Disclosure Schedule and not otherwise defined therein have the meanings given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Disclosure Schedule or the attached exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course of Business or consistent with past practice, and no party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Disclosure Schedule or exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter not set forth or included in this Agreement, the Disclosure Schedule or exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course of Business. In addition, matters reflected in the Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected in the Disclosure Schedule. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Disclosure Schedule will be deemed to broaden in any way the scope of the Parties' representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Disclosure Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan or arrangement which terms will be deemed disclosed for all purposes of this Agreement. The information contained in this Agreement, in the Disclosure Schedule and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of contract.

Section 9.19 No Waiver or Release. Notwithstanding anything herein to the contrary, all terms, conditions, covenants, representations and warranties contained in the DIP Order and the DIP Loan Documents, and all rights, powers and remedies of the DIP Secured Parties and all of the obligations of Seller thereunder (including, without limitation, the obligation to reimburse the DIP Secured Parties for fees and expenses incurred in connection with preparation and negotiation of this Agreement to the extent set forth therein), are reserved and are not amended, modified, limited or otherwise affected by the terms and conditions of this Agreement.

Section 9.20 Headings; Table of Contents. The section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.21 Counterparts; Facsimile and Email Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Section 9.22 Time of Essence. Time is of the essence of this Agreement.

**SIGNATURE PAGE TO
ASSET PURCHASE AGREEMENT**

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

SELLER:

OMEGA THERAPEUTICS, INC.

By _____
Name:
Title:

BUYER:

PIONEERING MEDICINES 08-B, INC.

By _____
Name:
Title:

Schedule 2.1(a)

Intellectual Property List

[To be provided.]²

² **Note to MNAT/Omega:** IP Schedules provided by email on 2/13 to be added along with a list of know-how (e.g., software source code, SOPs for tools, assays and platform frameworks). We'll provide the know-how list separately.

Schedule 2.1(l)

Agreements List³

1. Shared Space Arrangement, dated as of August 1, 2023, between Omega Therapeutics, Inc. (as “Licensor”) and Flagship Labs 89, Inc. (as “Licensee”)
 - a. Amended and Restated Shared Space Arrangement, dated as of September 1, 2024, between Omega Therapeutics, Inc. (as “Licensor”) and Prologue Medicines, Inc. (formerly Flagship Labs 89, Inc.) (as “Licensee”)
 - b. Amended and Restated Shared Space Arrangement, dated as of November 18, 2024, between Omega Therapeutics, Inc. (as “Licensor”) and Prologue Medicines, Inc. (formerly Flagship Labs 89, Inc.) (as “Licensee”)
2. Shared Space Arrangement, dated as of August 1, 2023, between Omega Therapeutics, Inc. (as “Licensor”) and Metaphore Biotechnologies, Inc. (as “Licensee”)
 - a. Amended and Restated Shared Space Arrangement, dated as of September 1, 2024, between Omega Therapeutics, Inc. (as “Licensor”) and Metaphore Biotechnologies, Inc. (as “Licensee”)
3. Shared Space Arrangement, dated as of September 1, 2023, between Omega Therapeutics, Inc. (as “Licensor”) and Apriori Bio, Inc. (as “Licensee”)
 - a. Amended and Restated Shared Space Arrangement, dated as of September 1, 2024, between Omega Therapeutics, Inc. (as “Licensor”) and Apriori Bio, Inc. (as “Licensee”)
 - b. Amended and Restated Shared Space Arrangement, dated as of November 18, 2024, between Omega Therapeutics, Inc. (as “Licensor”) and Apriori Bio, Inc. (as “Licensee”)
4. Shared Space Arrangement, dated as of August 1, 2024, between Omega Therapeutics, Inc. (as “Licensor”) and Flagship Labs 97, Inc. (as “Licensee”)
5. Shared Space Arrangement, dated as of September 1, 2024, between Omega Therapeutics, Inc. (as “Licensor”) and Flagship Labs 101, Inc. (as “Licensee”)
6. Shared Space Arrangement, dated as of September 1, 2024, between Omega Therapeutics, Inc. (as “Licensor”) and Flagship Labs 104, Inc. (as “Licensee”)
7. Shared Space Arrangement, dated as of November 18, 2024, between Omega Therapeutics, Inc. (as “Licensor”) and Flagship Labs 107, Inc. (as “Licensee”)

³ **Note to MNAT/Omega:** Please confirm these are all the existing agreements.

Schedule 2.6(a)

Assumed Contract List

The Contracts that Buyer directs to be assumed by Seller, and assigned to Buyer, under the Bankruptcy Code in accordance with the Agreement.

EXHIBIT A

Form of Bill of Sale and Assignment and Assumption Agreement

See attached.

EXHIBIT B

Form of Patent Assignment

See attached.

EXHIBIT C

Form of Trademark Assignment

See attached.

EXHIBIT D

Form of Bidding Procedures Order

See attached.