

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Ref. Docket Nos. 44, 111

**ORDER (I) AUTHORIZING THE SALE OF ASSETS OF
THE DEBTOR FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS; (II) APPROVING THE FINAL
ASSET PURCHASE AGREEMENT; (III) AUTHORIZING THE ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF**

Upon the Motion (the “**Motion**”)² of the Debtor requesting entry of (a) an order (i) authorizing the sale of assets of the Debtor (the “**Assets**”) outside the ordinary course of business (the “**Sale**”) to Emergex USA Corporation (the “**Purchaser**”) free and clear of liens, claims, encumbrances, and interests, with such liens, claims, encumbrances, and interests to attach to the proceeds of the Sale; (ii) approving the Final Purchase Agreement attached hereto as **Exhibit A** between the Debtor and the Purchaser; (iii) authorizing the assumption and assignment of the Assumed Contracts listed on **Exhibit B** hereto to the Purchaser; and (iv) granting related relief; and the Court having entered an order approving the bid procedures (the “**Bid Procedures**”) and granting related relief on July 1, 2022 [Docket No. 111] (the “**Bid Procedures Order**”); an Auction having been conducted pursuant to the terms of the Bid Procedures Order on July 20, 2022; and the Debtor having identified the Successful Bidder and

¹ The business address and the last four (4) digits of the Debtor’s federal tax identification number is Zosano Pharma Corporation, 34790 Ardentech Court, Fremont, California 94555 (8360).

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or in the Final Purchase Agreement, as applicable.



the Backup Bidder at the conclusion of the Auction; and the Court having conducted a hearing on the Motion on August 8, 2022 (the “**Sale Hearing**”), at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and adequate and sufficient notice of the Motion, the Sale Hearing, and the Sale and all transactions contemplated thereunder and in this Sale Order having been provided to all persons required to be served in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; and jurisdiction existing for the Court to consider the Motion; and upon the statements in support of the Motion presented at the hearing before the Court; and after due deliberation thereon it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors, and other parties in interest; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and the Court having (a) reviewed and considered the Motion, all relief related thereto, the objections thereto and statements of counsel and the evidence presented in support of the relief requested by the Debtor in the Motion at the Sale Hearing and (b) found that the Purchaser has submitted the highest or otherwise best bid for the Assets; and good and sufficient cause appearing therefor;

THE COURT MAKES THE FOLLOWING FINDINGS³:

A. Jurisdiction. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the 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 under 28 U.S.C. § 157(b).

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052.

B. Venue. Venue of this Case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. Statutory Predicates. The statutory and legal predicates for the relief requested in the Motion are sections 105, 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§101, *et seq.* (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

D. Final Order. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Sale Order.

E. Notice. In accordance with the Bid Procedures Order, and as evidenced by the certificate of service [Docket No. 128] previously filed with this Court, the Debtor served the Notice of Bid Procedures, Auction Date and Sale Hearing (as defined in the Bid Procedures Order), together with a copy of the Bid Procedures Order, the Bid Procedures and the Notice of Assumption and Assignment on the following parties (the “**Notice Parties**”): (i) the Office of the United States Trustee; (ii) all taxing authorities in the states where the Debtor is located, as well as the Internal Revenue Service, and all other federal, state and local taxing and regulatory authorities known to the Debtor to assert jurisdiction over the Debtor or which are reasonably expected by the Debtor to have claims, contingent or otherwise, in connection with the ownership of the Assets, or to have any known interest in the relief requested by the Motion; (iii) all parties

that have requested or that are required to receive special notice pursuant to Bankruptcy Rule 2002; (iv) all persons known or reasonably believed by the Debtor to have asserted any lien, claim, encumbrance, right of first refusal, or other interest in or upon any of the Assets; (v) all persons known or reasonably believed to have expressed an interest in acquiring the Assets within the last four (4) months; (vi) creditors holding the thirty (20) largest unsecured claims against the Debtor; (vii) the Securities & Exchange Commission; (viii) the U.S. Food & Drug Administration; (ix) the Delaware Secretary of State; (x) the Delaware State Treasury; (xi) the United States Attorney's office for the District of Delaware; (xii) Attorneys General in the states where the Debtor is located; and (xiii) any applicable state and local environmental agencies.

F. Publication Notice. The Debtor caused notice of the Auction, the Sale, and the Sale Hearing to be published in *The New York Times*, as provided by the Bid Procedures Order, as evidenced by the Affidavit of Publication Re: Notice of Bid Procedures, Auction Date, and Sale Hearing [Docket No. 125].

G. Notice Sufficient. Based upon the certificate of service, adequate and sufficient notice of the Motion, the Bid Procedures Order, the Bid Procedures, the Sale Hearing, the Sale, and the transactions contemplated thereby, including without limitation, the assumption and assignment of the Assumed Contracts to the Purchaser, has been provided in accordance with the Bid Procedures Order, sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9006. A reasonable opportunity to object or be heard regarding the relief granted by this Sale Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 6004(a). The Debtor has also provided notice of the potential assumption and assignment of the Assumed Contracts to the applicable non-Debtor counterparties. Such notice also identified all defaults and actual pecuniary loss to the non-Debtor counterparties resulting

from such defaults including, but not limited to, all claims, demands, charges, rights to refunds and monetary and non-monetary obligations that the non-Debtor counterparties can assert under the Assumed Contracts whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate, relating to money now owing or owing in the future, arising under or out of, in connection with, or in any way relating to the Assumed Contracts (the foregoing amounts, collectively referred to as the “**Cure Amounts**”). The service and provision of the notice was good, sufficient, and appropriate under the circumstances and no further notice need be given in respect of assumption and assignment of the Assumed Contracts or the proposed Cure Amount for the respective Assumed Contract. Non-Debtor counterparties to the Assumed Contracts have had an adequate opportunity to object to assumption and assignment of the applicable Assumed Contract and the Cure Amount (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the non-Debtor counterparty from accepting performance by, or rendering performance to, the Purchaser, for purposes of section 365(c)(1) of the Bankruptcy Code). The deadline to file an objection has expired and to the extent any such party timely filed an objection, all such objections have been resolved, withdrawn, overruled, or continued to a later hearing by agreement of the parties. To the extent that any such party did not timely file an objection, such party shall be deemed to have consented to (i) the assumption and assignment of the Assumed Contract and (ii) the corresponding proposed Cure Amount, if any.

H. Corporate Authority. The Debtor represents that (i) the Debtor has the corporate power and authority to execute the Final Purchase Agreement and all other documents contemplated thereby and the Sale of the Assets has been duly and validly authorized, (ii)

the Debtor has all of the corporate power and authority necessary to consummate the transactions contemplated by the Final Purchase Agreement, (iii) the Debtor has taken all corporate action necessary to authorize and approve the Final Purchase Agreement and the consummation of the transactions contemplated thereby, and (iv) no consents or approvals, other than those expressly provided for in the Final Purchase Agreement, are required for the Debtor to consummate such transactions.

I. Assets Property of the Estate. The Debtor represents that it is the lawful owner of the Assets. Subject to sections 363(f) and 365(a) of the Bankruptcy Code, the transfer of each of the Assets to the Purchaser in accordance with the Final Purchase Agreement will be, as of the Closing Date, a legal, valid, and effective transfer of the Assets, which transfer vests or will vest the Purchaser with all right, title, and interest of the Debtor to the Assets free and clear of all liens, claims, encumbrances, and interests, except for the Assumed Liabilities and any Permitted Liens, with such liens, claims, encumbrances, and interests to attach to the proceeds of the Sale.

J. Sufficiency of Marketing. The Debtor and its professionals marketed the Assets and conducted the marketing and sale process as set forth in and in accordance with the Motion and the Bid Procedures. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Assets.

K. Bid Procedures. The Bid Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Assets. The Debtor conducted the Sale process without collusion and in accordance with the Bid Procedures.

L. Final Purchase Agreement. On August 3, 2022, the Debtor entered into the Final Purchase Agreement [Docket No. 159] with the Purchaser for the acquisition of the Assets.

M. Sale in Best Interests of the Debtor's Estate. Good and sufficient reasons for approval of the Sale, the Final Purchase Agreement, and the transactions to be consummated in connection therewith have been articulated, and the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest. The Debtor has demonstrated both (a) good, sufficient and sound business purposes and justifications and (b) compelling circumstances for the Sale other than in the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code, outside of a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Successful Bidder or Backup Bidder, as applicable, is necessary and appropriate to maximize the value of the Debtor's estate and the Sale will provide the means for the Debtor to maximize creditor recoveries.

N. Arm's-Length and Purchaser's Good Faith. The Final Purchase Agreement was negotiated, proposed, and entered into by the Debtor and the Purchaser without collusion, in good faith and from arm's-length bargaining positions and is substantively and procedurally fair to all parties. The Purchaser is not an "insider" of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code. Neither the Debtor, nor the Purchaser, has engaged in any conduct that would cause or permit the Final Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code. Specifically, the Purchaser has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement among bidders. The Purchaser is purchasing the Assets, in accordance with the Final Purchase Agreement, in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and is therefore entitled to all of the protections afforded by such provision,

and otherwise has proceeded in good faith in all respects in connection with the Case. As demonstrated by (i) any testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, substantial marketing efforts and a competitive sale process were conducted in accordance with the Bid Procedures Order and, among other things: (a) the Debtor and the Purchaser complied with the provisions in the Bid Procedures Order; (b) the Purchaser in no way induced or caused the chapter 11 filing by the Debtor; and (c) all payments to be made by the Purchaser in connection with the Sale have been disclosed.

O. Highest or Otherwise Best Offer. The Debtor conducted the Auction in accordance with, and have otherwise complied in all material respects with, the Bid Procedures Order. The Auction established in the Bid Procedures Order afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed and conducted in a non-collusive, fair, and good faith manner and a reasonable opportunity was given to any interested party to make a higher or otherwise better offer for the Assets. The Final Purchase Agreement constitutes the highest or otherwise best offer for the Assets and will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative. The Debtor's determination that the Final Purchase Agreement constitutes the highest or otherwise best offer for the Assets is a valid and sound exercise of its fiduciary duty and constitutes a valid and sound exercise of the Debtor's business judgment.

P. No Fraudulent Transfer. The consideration provided by the Purchaser pursuant to the Final Purchase Agreement (a) is fair and reasonable, (b) is the highest or otherwise best offer for the Assets, and (c) constitutes reasonably equivalent value and fair consideration (as

those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code) under the laws of the United States, any state, territory, possession, or the District of Columbia. No other person or entity or group of entities has offered to purchase the Assets for greater economic value to the Debtor's estate than the Purchaser. Approval of the Motion, the Final Purchase Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Debtor, its estate, its creditors, and other parties in interest.

Q. No Successor. The transactions contemplated under the Final Purchase Agreement do not amount to a consolidation, merger, or de facto merger of the Purchaser and the Debtor and/or the Debtor's estate; there is not substantial continuity between the Purchaser and the Debtor; there is no continuity of enterprise between the Debtor and the Purchaser; the Purchaser is not a mere continuation of the Debtor or its estate; and the Purchaser is not a successor or assignee of the Debtor or its estate for any purpose, including but not limited to under any federal, state or local statute or common law. To the greatest extent allowed by applicable law, except for the Assumed Liabilities, the (i) transfer of the Assets to the Purchaser and (ii) assumption and assignment to the Purchaser of the Assumed Contracts, do not and will not subject the Purchaser to any liability whatsoever with respect to the operation of the Debtor's business before the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without

limitation, any theory of equitable law, including, without limitation, any theory of antitrust or successor or transferee liability.

R. Sale Authorized by Bankruptcy Code. The consummation of the Sale and the assumption and assignment of the Assumed Contracts are legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), and 365 of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the transaction.

S. Transfer of Assets Free and Clear. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full. The Debtor may, therefore, sell the Assets free and clear of any liens, claims, encumbrances, and interests in the property, other than the Assumed Liabilities and any Permitted Liens, with such liens, claims, encumbrances, and interests attaching to the proceeds of the Sale.

T. Free and Clear Findings Required by the Purchaser. The Purchaser would not have entered into the Final Purchase Agreement and would not consummate the transactions contemplated thereby if the Sale to the Purchaser and the assumption of any Assumed Liabilities by Purchaser were not free and clear of all liens, claims, encumbrances, and interests other than the Assumed Liabilities and any Permitted Liens. The Debtor may sell the Assets free and clear of any liens, claims, encumbrances, and interests of any kind or nature whatsoever because in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Each entity with a lien, claim, encumbrance, interest, or other interest in the Assets to be transferred on the Closing Date: (i) has, subject to the terms and conditions of this Sale Order, consented to the Sale or is deemed to have consented to the Sale; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of

such interest; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of a lien, claim, encumbrance, or interest who did not object to the Motion are deemed, subject to the terms of this Sale Order, to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All holders of liens, claims, encumbrances, or interests are adequately protected by having their liens, claims, encumbrances, or interests attach to the cash proceeds received by the Debtor that are ultimately attributable to the property against or in which such liens, claims, encumbrances, or interests are asserted, subject to the terms of such liens, claims, encumbrances, or interests with the same validity, force and effect, and in the same order of priority, which such liens, claims, encumbrances, or interests now have against the Assets or their proceeds, if any, subject to any rights, claims and defenses the Debtor or its estate, as applicable, may possess with respect thereto.

U. Cure/Adequate Assurance. The assumption and assignment of the Assumed Contracts pursuant to the terms of this Sale Order is integral to the Final Purchase Agreement, is in the best interests of the Debtor and its estate, creditors, and all other parties in interest, and represents the Debtor's reasonable exercise of sound and prudent business judgment. Payment of the Cure Amounts shall (i) to the extent necessary, cure or provide adequate assurance of cure, within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code, and (ii) to the extent necessary, provide compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Assumed Contracts, within the meaning of sections 365(b)(1)(B) and 365(f)(2)(A) of the Bankruptcy Code. Based upon the evidence presented at the Sale Hearing, the Purchaser's financial wherewithal to consummate the transactions contemplated by the Final Purchase Agreement demonstrate the Purchaser's ability

to perform the obligations under the Assumed Contracts after the Closing Date and establish adequate assurance of future performance within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

V. Assumed Contracts. Any objections to the assumption and assignment of any of the Assumed Contracts by the Purchaser, in accordance with the Final Purchase Agreement are hereby overruled. To the extent that any counterparty failed to timely object to the proposed Cure Amounts, such counterparty is deemed to have consented to such Cure Amounts and the assumption and assignment of its respective Assumed Contract(s) to the Purchaser in accordance with the Final Purchase Agreement; provided, however, that a counterparty to an Assumed Contract shall not be barred from seeking additional amounts on account of any defaults occurring between the deadline to object to the Cure Costs set forth in the Assumption and Assignment Notice and the assumption of the contract, subject to the Debtor's rights to contest any such amounts.

W. Sale as Exercise of Business Judgment. Entry into and consummation of the Purchase Contract constitutes the exercise by the Debtor of sound business judgment, and such acts are in the best interests of the Debtor, its estate and creditors, and all parties in interest. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the Sale of the Assets to the Purchaser.

X. Compelling Reasons for an Immediate Sale. Good and sufficient reasons for approval of the Purchase Agreement have been articulated by the Debtor. The Debtor has demonstrated compelling circumstances for the Sale outside: (a) the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code; and (b) a plan of reorganization or liquidation (as the case may be), in that, among other things, the immediate consummation of the Sale to the

Purchaser is necessary and appropriate to preserve and to maximize the value of the Debtor's estate. To maximize the value of the Assets and preserve the viability of the businesses to which the Assets relate, it is essential that the Sale occur promptly.

Y. No Sub Rosa Plan. The Purchase Agreement and the Sale do not constitute a *sub rosa* chapter 11 plan. The Purchase Agreement neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates a liquidating plan of reorganization for the Debtor.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The Motion is GRANTED and the relief requested therein APPROVED, as set forth herein.

2. Any objections to the entry of this Sale Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the Sale Hearing (the full record of which is incorporated herein by reference), by stipulation filed with the Court, or by representation by the Debtor in a separate pleading, and all reservations of rights included therein, if any, hereby are denied and overruled on the merits with prejudice.

3. Notice of the Motion, the Bid Procedures, the Bid Procedures Order, the Sale (and the Final Purchase Agreement contemplated in connection therewith), the assumption and assignment to the Purchaser of the Assumed Contracts, the Cure Costs, the Sale Hearing, and all deadlines related thereto was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006.

4. The Final Purchase Agreement, and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved in all respects. Pursuant to sections

363(b) and 363(f) of the Bankruptcy Code, the Debtor is hereby authorized to (a) execute the Final Purchase Agreement, along with any additional instruments or documents that may be reasonably necessary or appropriate to implement the Final Purchase Agreement, provided that such additional documents do not materially change its terms adversely to the Debtor's estate; (b) consummate the Sale in accordance with the terms and conditions of the Final Purchase Agreement and the instruments to the Final Purchase Agreement contemplated thereby; and (c) execute and deliver, perform under, consummate, implement, and close fully the transactions contemplated by the Final Purchase Agreement, including the assumption and assignment to the Purchaser (in accordance with the Final Purchase Agreement) of the Assumed Contracts, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Final Purchase Agreement and the Sale.

5. This Sale Order shall be binding in all respects upon the Debtor, its estate, all creditors of, and holders of equity interests in, the Debtor, any holders of liens, claims, encumbrances, or other interests in, against or on all or any portion of the Assets (whether known or unknown), the Purchaser, and all successors and assigns of the Purchaser and any trustees, if any, subsequently appointed in the Case or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtor's Case. This Sale Order and the Final Purchase Agreement shall inure to the benefit of the Debtor, its estate and creditors, the Purchaser and the respective successors and assigns of each of the foregoing.

6. Pursuant to sections 105(a), 363(b) and 363(f) of the Bankruptcy Code, the Debtor is authorized to transfer the Assets to the Purchaser in accordance with the Final Purchase Agreement and such transfer shall constitute a legal, valid, binding, and effective transfer of the Assets and shall vest the Purchaser with title in and to the Assets and, other than

the Assumed Liabilities and any Permitted Liens, Purchaser shall take title to and possession of the Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including (to the extent allowed by applicable law) but not limited to successor or successor-in-interest liability and Claims in respect of the Excluded Liabilities, with all such liens, claims, encumbrances, and interests to attach to the cash proceeds received by the Debtor that are ultimately attributable to the property against or in which such liens, claims, encumbrances, or interests are asserted, subject to the terms of such liens, claims, encumbrances or interests with the same validity, force and effect, and in the same order of priority, which such liens, claims, encumbrances, or interests now have against the Assets or their proceeds, if any, subject to any rights, claims, and defenses the Debtor or its estate, as applicable, may possess with respect thereto.

7. On the Closing Date, all persons and entities that are in possession of some or all of the Assets are directed to surrender possession of such Assets to the Purchaser in accordance with the Final Purchase Agreement. Additionally, on the Closing Date, each of the Debtor's creditors is authorized to execute such documents and take all other actions as may be reasonably necessary to release its liens, claims, encumbrances, or other interests in the Assets, if any, as such liens, claims, encumbrances, and interests may have been recorded or may otherwise exist.

8. If any person or entity which has filed statements or other documents or agreements evidencing liens or encumbrances on, claims against, or interests in, all or any portion of the Assets (other than statements or documents with respect to the Assumed Liabilities) shall not have delivered to the Debtor prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases

of liens and easements, and any other documents necessary for the purpose of documenting the release of all liens, encumbrances, claims, or other interests which the person or entity has or may assert with respect to all or any portion of the Assets, the Debtor is hereby authorized, and the Purchaser is hereby authorized, to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to the Assets.

9. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer to the Purchaser of the Debtor's interests in the Assets. This Sale Order is and shall be effective as a determination that, on the Closing Date, all liens, claims, encumbrances, or other interests of any kind or nature whatsoever existing as to the Assets prior to the Closing Date, other than the Assumed Liabilities and any Permitted Liens, shall have been unconditionally released, discharged and terminated, with all such liens, claims, encumbrances, and interests attaching to the proceeds received by the Debtor, in accordance with paragraph 6 above, and that the conveyances described herein have been effected. A certified copy of this Sale Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel any liens and other encumbrances of record except those assumed as Assumed Liabilities.

10. Except for the Assumed Liabilities, the Purchaser shall not have any liability or other obligation of the Debtor arising under or related to any of the Assets including, but not limited to, any liability for any liens, claims, encumbrances, or interests whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with or in any way relating to the operation of the Debtor's business prior to the Closing Date. The

Purchaser's acquisition of the Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the time of the Closing. The Purchaser's operations shall not be deemed a continuation of the Debtor's business as a result of the acquisition of the Assets purchased.

11. Except with respect to the Assumed Liabilities, or as otherwise expressly provided for in this Sale Order or the Final Purchase Agreement, all persons and entities, including, but not limited to, all debt holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding liens, claims, encumbrances, or other interests of any kind or nature whatsoever against or in all or any portion of the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate), arising under or out of, in connection with, or in any way relating to the Debtor, the Assets, the operation of the business prior to the Closing Date, or the transfer of the Assets to the Purchaser in accordance with the Final Purchase Agreement, hereby are forever barred, estopped and permanently enjoined from asserting against the Purchaser, its successors or assigns, its property or the Assets, such persons' or entities' liens, claims, encumbrances or interests in and to the Assets, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors, assets, or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser, its successors, or its assets or properties; (c) creating, perfecting, or enforcing any lien, claim, encumbrance, or interest against the Purchaser, its successors, its assets, or its properties; (d) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale

Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or (e) revoking, terminating or failing or refusing to transfer or renew any license, permit, or authorization to operate any of the Assets or conduct any business operated with the Assets.

12. To the greatest extent available under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtor with respect to the Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been transferred to the Purchaser as of the Closing Date. For avoidance of doubt, nothing in this Order or the Final Purchase Agreement releases, nullifies, precludes, or enjoins the enforcement of any valid police or regulatory liability to a governmental unit, to which the Purchaser may be subject to as the owner or operator of any property that is a Purchased Asset after the date of entry of this Order; provided, however, that all rights and defenses of the Purchaser under nonbankruptcy law are preserved. Nothing in this Order or the Final Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Order divests any tribunal of any jurisdiction it may have under police or regulatory law.

13. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtor to sell and transfer the Assets to the Purchaser in accordance with the terms of the Final Purchase Agreement and this Sale Order.

14. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Final Purchase Agreement, the Motion, and this Sale Order.

15. The consideration provided by the Purchaser for the Assets under the Final Purchase Agreement shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded under section 363(n) or any other provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law.

16. Notwithstanding the foregoing, nothing herein shall prevent (a) the Debtor from pursuing an action against the Purchaser arising under the Final Purchase Agreement or the related documents, or (b) any administrative agencies, governmental, tax and regulatory authorities, secretaries of state, federal, state, and local officials from properly exercising their police and regulatory powers.

17. Notwithstanding any provision of any contract governing the Assets or any Assumed Contract to be assumed and assigned to the Purchaser as of the Closing Date, the Debtor is hereby authorized, in accordance with sections 105(a) and 365 of the Bankruptcy Code, to (a) assume and assign to the Purchaser in accordance with the Final Purchase Agreement, effective upon the Closing Date or the payment of the Cure Amounts, whichever is later, the Assumed Contracts free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than the Assumed Liabilities) and (b) execute and deliver to the Purchaser such documents or other instruments as the Purchaser deems may be necessary

to assign and transfer the Assumed Contracts and the Assumed Liabilities to the Purchaser in accordance with the Final Purchase Agreement. Additionally, there shall be no accelerations, assignment fees, increases, or any other fees charged to the Purchaser or the Debtor as a result of the assumption and assignment of the Assets and the Assumed Contracts.

18. With respect to the Assumed Contracts: (a) each Assumed Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code; (b) the Debtor may assume each of the Assumed Contracts in accordance with section 365 of the Bankruptcy Code; (c) the Debtor may assign each Assumed Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect; (d) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the Purchaser of each Assumed Contract, in accordance with the Final Purchase Agreement have been satisfied; (e) the Assumed Contracts shall be transferred and assigned to, and following the Closing Date remain in full force and effect for the benefit of, the Purchaser in accordance with the Final Purchase Agreement, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer) and, pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Assumed Contracts after such assignment to and assumption by the Purchaser in accordance with the Final

Purchase Agreement; and (f) upon the Closing Date, in accordance with sections 363 and 365 of the Bankruptcy Code, Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Assumed Contract.

19. All defaults or other obligations of the Debtor under the Assumed Contracts arising or accruing prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be cured on the Closing Date or as soon thereafter as practicable by payment of the Cure Amounts. To the extent that any counterparty to an Assumed Contract did not object to its Cure Amount by the objection deadline, such counterparty is deemed to have consented to such Cure Amount and the assumption and assignment of its respective Assumed Contract(s) to the Purchaser in accordance with the Final Purchase Agreement; provided, however, that a counterparty to an Assumed Contract shall not be barred from seeking additional amounts on account of any defaults occurring between the deadline to object to the Cure Costs set forth in the Assumption and Assignment Notice and the assumption of the contract (subject to the Debtor's right to contest any such amounts).

20. Unless otherwise represented by the Debtor in a separate pleading, in open court at the Sale Hearing, or pursuant to a contract or lease amendment entered into by the Debtor, the Purchaser, and the appropriate contract or lessor counterparty (any such amendment being deemed approved by this Sale Order), the respective Cure Amounts reflect the sole amounts necessary under section 365(b) of the Bankruptcy Code to cure all monetary defaults under the Assumed Contracts, if any, and no other amounts are or shall be due in connection with the assumption by the Debtor and the assignment to the Purchaser of the Assumed Contracts in accordance with the Final Purchase Agreement.

21. Upon the Debtor's assignment of the Assumed Contracts to the Purchaser under the provisions of this Sale Order and any additional orders of this Court and payment of any Cure Amounts pursuant to paragraph 19 hereof, no default shall exist under any Assumed Contract, and no counterparty to any Assumed Contract shall be permitted (a) to declare a default by the Purchaser under such Assumed Contract or (b) otherwise take action against the Purchaser as a result of the Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the relevant Assumed Contract. Each non-Debtor counterparty to an Assumed Contract, unless otherwise ordered by the Court, hereby is also forever barred, estopped, and permanently enjoined from (i) asserting against the Debtor or the Purchaser or the property of any of them, any default or claim arising out of any indemnity obligation or warranties for acts or occurrences arising prior to or existing as of the Closing, including those constituting Excluded Liabilities, or against the Purchaser, any counterclaim, defense, or any other Claim asserted or able to be asserted against the Debtor; and (ii) imposing or charging against the Purchaser any rent accelerations, assignment fees, increases, or any other fees as a result of the Debtor's assumption and assignment to the Purchaser of any Assumed Contract in accordance with the Final Purchase Agreement. The validity of such assumption and assignment of each Assumed Contract shall not be affected by any dispute between the Debtor and any non-Debtor counterparty to an Assumed Contract relating to such Contract's respective Cure Amounts.

22. Except as provided in the Final Purchase Agreement or this Sale Order, after the Closing, the Debtor and its estate shall have no further liabilities or obligations with respect to any Assumed Liabilities and any Permitted Liens and all holders of such liens, claims,

encumbrances, and interests are forever barred and estopped from asserting such claims against the Debtor, its successors or assigns, its property or its assets or estate.

23. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Debtor's and the Purchaser's rights to enforce every term and condition of the Assumed Contracts.

24. The transactions contemplated by the Final Purchase Agreement are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Assumed Contracts) with the Purchaser unless such authorization is duly stayed pending such appeal. The Purchaser is a good faith purchaser of the Assets and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code.

25. The failure to include any particular provisions of the Final Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provisions, and the Court finds that that the Final Purchase Agreement be authorized and approved in its entirety; *provided, however*, that this Sale Order shall govern if there is any inconsistency between the Final Purchase Agreement (including all ancillary documents executed in connection therewith) and this Sale Order. Likewise, all of the provisions of this Sale Order are nonseverable and mutually dependent. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion in this Case, the terms of this Sale Order shall control.

26. The Final Purchase Agreement and any related agreements, documents or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate.

27. Any amounts payable by the Debtor under the agreements or any of the documents delivered by the Debtor in connection with the Final Purchase Agreement shall be paid in the manner provided in the Final Purchase Agreement and the Bid Procedures Order, without further order of this Court, shall be allowed administrative claims in an amount equal to such payments in accordance with sections 503(b) and 507(a)(2) of the Bankruptcy Code, shall have the other protections provided in the Bid Procedures Order, and shall not be discharged, modified, or otherwise affected by any reorganization plan for the Debtor, except by an express agreement with the Purchaser, its successors, or assigns.

28. Nothing contained in any chapter 11 plan confirmed in the Debtor's Case or any order confirming any such plan or in any other order in this Case (including any order entered after any conversion of this Case to a case under chapter 7 of the Bankruptcy Code) or any related proceeding subsequent to entry of this Sale Order shall alter, conflict with, or derogate from, the provisions of the Final Purchase Agreement or this Sale Order unless otherwise agreed to by the Debtor and the Purchaser.

29. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), and pursuant to Bankruptcy Rules 7062 and 9014, this Sale Order shall not be stayed for fourteen days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein, and the Debtor and

the Purchaser intend to close the Sale as soon as practicable. Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

30. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

31. From time to time, as and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by the Final Purchase Agreement including such actions as may be necessary to vest, perfect, or confirm, of record or otherwise, in the Purchaser its right, title, and interest in and to the Assets.

32. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the Final Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith to which any Debtor is a party or which has been assigned by the Debtor to the Purchaser in accordance with the Final Purchase Agreement, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale, including, but not limited to, retaining jurisdiction to (a) interpret, implement, and enforce the provisions of this Sale Order and the Final Purchase Agreement; (b) protect the Purchaser against any liens, claims, encumbrances, or other interests in the Debtor or the Assets of any kind or nature whatsoever, arising or existing prior to the Closing Date and attaching to the proceeds of the Sale, and (c) enter any orders under sections 363 and 365 of the Bankruptcy Code with respect to the Assumed Contracts.

Exhibit A

Final Purchase Agreement

ASSET PURCHASE AGREEMENT
by and among
ZOSANO PHARMA CORPORATION,
and
EMERGEX USA CORPORATION

August 3, 2022

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (as amended or modified, this “Agreement”) is entered into as of August 3, 2022, by and Zosano Pharma Corporation, a Delaware corporation (“Zosano” or “Seller”), and Emergex USA Corporation, 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, Seller is a debtor and debtor-in-possession under title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”) in a bankruptcy case under Chapter 11 of the Bankruptcy Code captioned *In re Zosano Pharma Corporation*, Case No. 22-10506 (JKS) (the “Chapter 11 Case”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, Seller is a commercially focused biopharmaceutical company enabling the systemic administration of therapeutics and other bioactive molecules to patients using proprietary transdermal microneedle patch system (the “Business”);

WHEREAS, Seller wishes to sell, transfer and assign to Buyer, and Buyer wishes to purchase, acquire and assume from Seller, pursuant to Sections 105, 363, 365, and other applicable provisions of the Bankruptcy Code, the Acquired Assets as of the Closing;

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

WHEREAS, pursuant to the Bid Procedures Order, the Seller shall conduct an Auction to determine the highest and otherwise best offer for the Acquired Assets; and

WHEREAS, the Contemplated Transaction is subject to the approval of the Bankruptcy Court 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, the Parties agree as follows:

ARTICLE I DEFINITIONS

“Acquired Assets” means all of Seller’s right, title and interest in and to the assets described in Section 2.1.

“Administrative Claim” means a Claim arising under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code.

“Affiliate” when used with reference to another Person means any Person, directly or indirectly, through one or more intermediaries, Controlling, Controlled by, or under common Control with, such other Person.

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

“Alternate Transaction” means a transaction or series of related transactions pursuant to which Seller (a) accepts a Qualified Bid, other than that of Buyer, as the highest and best offer, or (b) sell, transfer, lease or otherwise dispose 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 any material portion of the Acquired Assets (or agrees to do any of the foregoing) in a transaction or series of transactions to a Person or Persons other than Buyer.

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

“Auction” means the auction for the sale and assumption of the Acquired Assets conducted by Seller in accordance with the Bid Procedures Order.

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

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

“Bid Procedures Order” means the order of the Bankruptcy Court entered in the Chapter 11 Case at Docket No. 111.

“Bill of Sale” has the meaning set forth in Section 2.7(a)i.

“Business” has the meaning set forth in the recitals.

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

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

“Cash Payment” has the meaning set forth in Section 2.5.

“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” has the meaning set forth in Section 2.6.

“Closing Date” has the meaning set forth in Section 2.6.

“Confidentiality Agreement” means that confidentiality agreement dated April 7, 2021, by and among Seller and Buyer, regarding the terms and conditions on which Seller would make available certain information.

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

“Contemplated Transaction” means the sale by Seller to Buyer, and the purchase by Buyer from Seller, of the Acquired Assets, including the assumption, assignment and sale by Seller to Buyer, and the acceptance by Buyer, all in the manner and subject to the terms and conditions set forth in this Agreement and the Related Agreements.

“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.

“Control” means, when used with reference to any Person, the power to direct the management or policies of such Person, directly or indirectly, by or through stock or other equity ownership, agency or otherwise, or pursuant to or in connection with any Contract; and the terms “Controlling” and “Controlled” shall have meanings correlative to the foregoing.

“Decree” 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.

“Deposit” has the meaning set forth in Section 2.9.

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

“Escrow Account” has the meaning set forth in Section 2.9.

“Escrow Agent” has the meaning set forth in Section 2.9.

“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 to any Excluded Asset or Excluded Liability.

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

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

“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.

“Intellectual Property Assignments” means any necessary assignment agreements relating to the assignment of Intellectual Property acquired by Buyer.

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

“Law” means any federal, state, provincial, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance (including with respect to zoning or other land use matters), code, treaty, convention, rule, regulation, requirement, edict, directive, pronouncement, determination, proclamation or Decree of any Governmental Entity.

“Lien” means any mortgage, deed of trust, hypothecation, contractual restriction, pledge, lien, encumbrance, interest, charge, security interest, put, call, other option, right of first refusal, right of first offer, servitude, right of way, easement, conditional sale or installment contract, finance lease involving substantially the same effect, security agreement or other encumbrance or restriction on the use, transfer or ownership of any property of any type (including real property, tangible property and intangible property and including any “Lien” as defined in the Bankruptcy Code).

“Litigation” 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.

“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 materially adverse to the financial condition or results of operations of the Acquired 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) national or international business, economic, political or social conditions, including the engagement by the United States of America in hostilities, affecting (directly or indirectly) the industry in which the Business operates, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States of America or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States of America, except to the extent that such change has a materially disproportionate adverse effect on the Business relative to the adverse effect that such changes have on other companies in the industry in which the Business operates; (ii) financial,

banking or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index), except to the extent that such change has a materially disproportionate adverse effect on Business relative to the adverse effect that such changes have on other companies in the industry in which the Business operates; (iii) compliance with this Agreement or any Related Agreement, including the taking of any action required hereby or thereby or the failure to take any action that is not permitted hereby or thereby; (iv) any changes directly attributable to the announcement of this Agreement or any Related Agreement; (v) resulting from any act of God or other force majeure event (including natural disasters); (vi) in the case of Seller or the Business, (A) the failure to meet or exceed any projection or forecast or (B) changes in the business or operations of Seller or any of their respective Affiliates (including changes in credit terms offered by suppliers or financing sources) resulting from the announcement or the filing of the Chapter 11 Case or Seller's financial condition or Seller's status as a debtor under Chapter 11 of the Bankruptcy Code; (vii) seasonal changes in the results of operations (provided that such seasonal changes are consistent with the historic experience of the Business); or (ix) inaction by Seller due to Buyer's refusal to consent to a request for consent by Seller under Section 5.4 hereof; or (b) would reasonably be expected to prevent, materially delay or materially impair to the ability of any Seller to consummate the transactions contemplated by this Agreement or the Related Agreements on the terms set forth herein and therein.

"Outside Back-Up Date" means the date that is thirty (30) days after the date of the Sale Hearing.

"Ordinary Course of Business" means the ordinary course of business of Seller consistent with past custom and practice and subject to any modifications of such practice as a result of the filing of the Chapter 11 Case.

"Parent" means Emergex Vaccines Holding Limited, a private limited company organized under the laws of England and Wales.

"Parties" has the meaning set forth in the preamble.

"Patheon" means Patheon Manufacturing Services LLC.

"Patheon Agreements" refers to that certain Manufacturing and Supply Agreement, dated as of September 25, 2018, between the Seller and Patheon, as amended, modified or supplemented from time to time and that certain Technology Transfer Agreement, dated as of September 25, 2018, between the Seller and Patheon, as amended, modified or supplemented from time to time.

"Permit" means any franchise, approval, permit, license, order, registration, certificate, variance, Consent, exemption or similar right issued, granted, given or otherwise obtained from or by any Governmental Entity, under the authority thereof or pursuant to any applicable Law.

"Permitted Liens" means Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established and which (if ultimately determined to be owed) will be satisfied by the Seller.

“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.

“Petition Date” means June 1, 2022.

“Plan” means a plan of reorganization or liquidation proposed by the Seller.

“Priority Claim” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code.

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

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

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

“Related Agreements” means the Bill of Sale and 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 Acquired Assets to Buyer.

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

“Sale Order” means an order of the Bankruptcy Court approving and authorizing the sale of the Acquired Assets to Buyer substantially in the form attached as Exhibit A hereto, with such changes as may be required by the Bankruptcy Court that are in form and substance reasonably acceptable to Buyer and Seller.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions pursuant to the Sale Order.

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

“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, liquor, cigarette, transfer, value

added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, 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.

“Transfer Tax” has the meaning set forth in Section 6.4.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Acquired 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 the Acquired Assets listed herein, free and clear of all Liens (other than Permitted Liens), for the consideration specified in Section 2.5. Without limiting the generality of the foregoing, the Acquired Assets shall include the following (except to the extent included as an Excluded Asset):

(a) all equipment owned by the Seller, wherever located (collectively, the “Equipment”), as described on Schedule 2.1;

(b) all inventory owned by the Seller, wherever located, as described on Schedule 2.1;

(c) all Intellectual Property of the Seller, as described on Schedule 2.1, including but not limited to: (i) all relevant knowhow, (ii) all patents whether in the form of drafts, priority applications, improvements, extensions, continuations, granted patents whether universally, worldwide, regional or within any other patentable territory, together with all goodwill associated with each of the foregoing; (iii) existing, issued trademarks, company logos, service marks, trade dress and corporate names, registrations, pending and existing applications for any of the foregoing, together with all goodwill associated with each of the foregoing; (iv) copyright registrations and copyright applications; (v) Internet domain names and Internet Protocol Addresses; (vi) social media accounts and on-line marketing accounts; (vii) trade secrets; (vii) customer lists (including email lists); and (vii) all other intellectual property of the Seller arising under the laws of any jurisdiction;

(d) all furniture and fixtures owned by the Seller located at its Fremont, California facility, as described on Schedule 2.1;

(e) certain of the Seller’s valid insurance policies (including all records of claims made against such policies but excluding any directors’ and officers’ liability

insurance policies), subject to further diligence and applicable consent of the respective insurer(s);¹

(f) the Seller's books and records solely to the extent they relate to the Acquired Assets, provided, however, that a liquidating trustee or other officer of the Debtor's bankruptcy estate shall have access on reasonable notice to any such books and records for two (2) years following Closing; and

(g) all claims and causes of action of Seller solely to the extent they relate directly to the Acquired Assets.

Section 2.2 **Excluded Assets.** Notwithstanding Section 2.1, Buyer expressly understands and agrees that Buyer is not purchasing or acquiring, and Seller is not selling or assigning, any of the Seller's assets, properties and rights of Seller other than the Acquired Assets (the "Excluded Assets"). The Excluded Assets shall include, without limitation, the following:

(a) Seller's personal property other than that included in the Acquired Assets;

(b) Seller's cash and cash equivalents;

(c) Seller's accounts receivable;

(d) Seller's tangible property other than the Acquired Assets;

(e) Seller's certificate of incorporation 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, stock certificates and other documents relating to the organization, maintenance and existence of any Seller as a corporation, limited liability company or other entity;

(f) all equity securities of Seller and all net operating losses of Seller;

(g) the Excluded Claims;

(h) any loans or notes payable to Seller;

(i) any (1) confidential personnel and medical Records pertaining to any current or former employees of Seller to the extent the disclosure of such information is prohibited by applicable Law, (2) other Records that Seller is required by Law to retain and (3) any Records or other documents relating to the Chapter 11 Case 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

¹ NTD: Exact scope of policies to be acquired, if any, under review.

referenced in subsection (3)) to the extent that such portions relate to the Business or any Acquired Asset;

- (j) all directors' and officers' liability insurance policies; and
- (k) the rights of Seller under this Agreement and all cash and non-cash consideration payable or deliverable to Seller under this Agreement.

Section 2.3 **Assumed Liabilities.** Subject to the procedures set forth in Section 2.11, Seller will assume and assign to Buyer the Contracts listed in Schedule 2.3 (the "Assumed Contracts").

Section 2.4 **Excluded Liabilities.** Except as otherwise provided herein, 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.

Section 2.5 **Consideration.** In consideration of the sale of the Business and the Acquired Assets to Buyer, and in reliance upon the representations, warranties, covenants and agreements of Seller set forth herein, and upon the terms and subject to the conditions set forth herein, the aggregate consideration for the sale and transfer of the Acquired Assets (the "Purchase Price") shall be composed of:

- (a) cash equal to \$1,000,000.00 (the "Cash Payment"), plus
- (b) reimbursement by Buyer of up to, but not more than, \$250,000 in actual, reasonable, and documented costs to dismantle and remove the Client Manufacturing Equipment (as defined in the Patheon Agreements) from the facility owned by Patheon, located at 5900 Martin Luther King Jr. Highway, Greenville, NC 27834 (the "Patheon Facility") and the Make Good Costs (as defined in, and provided for, under the Patheon Agreements) (collectively, the "Reimbursable Patheon Costs"), subject to Patheon's agreement to provide reasonable cooperation with the relocation of such removed Client Manufacturing Agreement to the location designated by Buyer. Buyer shall pay the Reimbursable Patheon Costs to Patheon by the later of (i) 30 calendar days after Buyer is provided with a final invoice or the Reimbursable Patheon Costs, and (ii) December 31, 2022.

Section 2.6 **Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place remotely by electronic exchange of counterpart signature pages commencing at 11:00 a.m. (Eastern time) on the date (the "Closing Date") that is the first Business Day after the date on which all conditions to the obligations of Seller and Buyer to consummate the Contemplated Transaction 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, or at such other time or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto.

Section 2.7 **Deliveries at Closing.**

(a) At the Closing, Seller shall deliver to Buyer the following documents and other items, duly executed by Seller, as applicable:

- i. one or more Bills of Sale substantially in the form of Exhibit B attached hereto (“Bill of Sale”);
- ii. one or more Intellectual Property Assignments substantially in the form of Exhibit C attached hereto; and
- iii. to the extent applicable, a non-foreign affidavit from Seller dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the IRC stating that such Seller is not a “foreign person” as defined in Section 1445 of the IRC.

(b) At the Closing, Buyer shall deliver to Seller, or the designated third-party recipients pursuant to Section 2.5, the following documents, cash amounts and other items, duly executed by Buyer, as applicable:

- i. An amount equal to the Cash Payment minus the Deposit, by wire transfer of immediately available funds to one or more bank accounts designated in writing to Buyer by Seller or the designated third-party recipients thereof (the “Seller’s Accounts”).

Section 2.8 **Allocation.** Within thirty (30) calendar days after the Closing Date, Buyer shall in good faith prepare an allocation of the Purchase Price (and all capitalized costs and other relevant items) among the Acquired 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) 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. Seller shall also retain the right to dispute Buyer’s proposed and final allocations. 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 unless required to do so by applicable Law.

Section 2.9 **Deposit.** To the extent not already paid, upon the execution of this Agreement, Parent will make a cash deposit in the amount of \$100,000.00 (the “Deposit”) by wire transfer of immediately available funds to be held by Greenberg Traurig, LLP (the “Escrow Agent”) in escrow (the “Escrow Account”). In the event that the Closing occurs, the Deposit will be applied to satisfy an equal portion of the Cash Payment, and Buyer shall direct the Escrow Agent to release the Deposit to Seller at the Closing. In any other event, the Deposit shall be released by the Escrow Agent to the Party entitled thereto in accordance with Section 8.5, and the Parties shall promptly direct the Escrow Agent to release the Deposit

accordingly. The Deposit shall only constitute property of the Seller's bankruptcy estates in the event that the Deposit is required to be released to Seller by the Escrow Agent in accordance with the terms of this Agreement.

Section 2.10 Preparation and Delivery of Acquired Assets; Technology Transfer Assistance.

(a) Seller will make the Acquired Assets available for pickup by Buyer on a date to be mutually agreed by the Seller and Buyer that is no later than 10 days after the Closing. With respect to any Acquired Assets that are located at a third party facility, Seller will provide the applicable third party with evidence that such Acquired Assets have been sold to Buyer and will provide Buyer with such other cooperation needed to transfer possession of the Acquired Assets as reasonably requested by Buyer.

(b) For a period of 30 days after the Closing, and upon the reasonable request of Buyer, Seller will use commercially reasonable efforts to facilitate introductions (via telephone, videoconference, email or other remote means) to those former Seller personnel who are knowledgeable about the Acquired Assets.

Section 2.11 Assumption/Rejection of Certain Contracts.

(a) Assumption and Assignment of Assumed Contracts. Seller shall provide timely and proper written notice of the motion seeking entry of the Sale Order to all parties to the Assumed Contracts and take all other actions necessary or otherwise required to cause such Contracts to be assumed by Seller and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code (including (x) serving on all non-Seller counterparties to the Assumed Contracts a notice specifically stating (i) that Seller is or may be seeking the assumption and assignment of the Assumed Contracts, (ii) the deadline for objecting to the Cure Costs or any other aspect of the proposed assumption and assignment of the Assumed Contracts to Buyer, and (iii) in an exhibit, Seller's good faith estimate of the amounts necessary to cure any defaults under each of the Assumed Contracts as determined by Seller based on Seller's books and records, and (y) taking, as promptly as practicable, all other actions reasonably requested by Buyer to facilitate any negotiations with the counterparties to such Assumed Contracts including without limitation, providing Buyer with reasonable access to relevant business records, personnel, and Buyer's other reasonable requests in order to allow Buyer to assist with evaluating the Cure Costs, and to obtain an Order containing a finding that the proposed assumption and assignment of the Assumed Contracts to Buyer satisfies all applicable requirements of Section 365 of the Bankruptcy Code. The Sale Order shall provide that as of and conditioned on the occurrence of the Closing, Seller shall assign or cause to be assigned to Buyer the Assumed Contracts, each of which shall be identified in an exhibit to the Sale Order (along with the required cure amount) by the name or appropriate description and date of the Assumed Contract (if available), the other party to the Assumed Contract and the address of such party for notice purposes. At the Closing, subject to Section 2.11(b), Seller shall, pursuant to the Sale Order and the Bill

of Sale, assign to Buyer all Assumed Contracts that may be assigned by any such Seller to Buyer pursuant to Sections 363 and 365 of the Bankruptcy Code. At the Closing, Seller (i) shall pay all Cure Costs and (ii) shall assume or cause to be assumed, and thereafter in due course and in accordance with its respective terms pay, fully satisfy, discharge and perform (or cause to be fully satisfied, discharged and performed) all of the obligations under each Assumed Contract pursuant to Section 365 of the Bankruptcy Code. Buyer may request, in its reasonable business judgment, certain modifications and amendments to any Contract as a condition to such Contract becoming an Assumed Contract, and Seller shall use commercially reasonable efforts to obtain such modifications or amendments; provided, however, that, for so long as Seller uses commercially reasonable efforts to obtain such modifications or amendments, the failure to obtain any such modifications or amendments shall, in and of itself, not be a condition to Buyer's obligation to consummate the transactions contemplated by this Agreement on the Closing Date.

(b) Excluding Assumed Contracts. Buyer shall have the right to notify Seller in writing of any Assumed Contract that it does not wish to assume at any time prior to the Closing and any such previously considered Assumed Contract that Buyer no longer wishes to assume shall be automatically deemed removed from Schedule 2.1, without any adjustment to the Purchase Price.

(c) Adding Assumed Contracts. Buyer shall have the right to notify, and seek the consent of, Seller in writing, up to three (3) days prior to the Sale Hearing, of any Contract to which Seller is a party and which relates to the Equipment but was not initially included in the Assumed Contracts that Buyer wishes to assume. Upon the consent of Seller, any such additional Contract that Buyer wishes to assume shall be added to Schedule 2.1, without any adjustment to the Purchase Price.

Section 2.12 Cure Costs. Subject to entry of the Sale Order and consummation of the Closing: (a) Seller shall pay any Cure Costs, and (b) Buyer shall cause any and all other non-monetary defaults and breaches under the Assumed Contracts to be cured so that such Contracts may be assumed by Seller and assigned to Buyer in accordance with the provisions of Section 365 of the Bankruptcy Code and this Agreement. "Cure Costs" means all cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts.

ARTICLE III SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller represents and warrants to Buyer that except as set forth in the disclosure schedule accompanying this Agreement (the "Disclosure Schedule"):

Section 3.1 Organization of Seller; Good Standing.

(a) Seller is duly organized, validly existing and, to the extent applicable, in good standing under the Laws of its state of formation and has all necessary power

and authority to own, lease and operate its properties and to conduct its business in the manner in which its Business is currently being conducted. Seller has all requisite corporate or similar power and authority to own, lease and operate its assets and to carry on the Business as currently conducted.

(b) 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 Acquired Assets or the conduct of the Business requires such qualification, 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) Seller has no Affiliates.

Section 3.2 **Authorization of Transaction.** 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:

(a) 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 to perform its obligations hereunder and thereunder; the execution, delivery and performance of this Agreement and all Related Agreements to which a Seller is a party have been duly authorized by such Seller and no other corporate action on the part of any Seller is necessary to authorize this Agreement or the Related Agreements to which it is party or to consummate the Contemplated Transaction; and

(b) this Agreement has been duly and validly executed and delivered by Seller, and, upon their 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, as applicable. 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 its 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 Transaction (including the Related Agreements), will, 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, (i) conflict with or result in a

breach of the certificate of incorporation, by-laws or other organizational documents of Seller, (ii) violate any Law to which any Seller is, or its respective assets or properties are, subject, or (iii) subject to the entry of the Sale Order, conflict with, any Assumed Contract, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the ability of Seller to consummate the transactions contemplated by this Agreement or by the Related Agreements.

(b) Except as set forth in Section 3.3(b) of the Disclosure Schedule, 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), 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 any Seller of this Agreement or any Related Agreement. After giving effect to 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 any Seller from, or to be given by any Seller to, or made by any Seller with, any Person that is not a Governmental Entity in connection with the execution, delivery and performance by any 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, reasonably be expected to prevent, materially delay or materially impair the ability of Seller to consummate the transactions contemplated by this Agreement or by the Related Agreements.

Section 3.4 Compliance with Laws. Seller is in compliance with all material Laws applicable to the Business or the Acquired Assets, except in any such case where the failure to be in compliance would not have a Material Adverse Effect.

Section 3.5 Title to Acquired Assets. Seller, as of the Closing, has good and valid title to the Acquired Assets, free and clear of all Liens (except for Permitted Liens), subject to entry of the Sale Order. At the Closing, Seller will convey to Buyer good and valid title to all of the Acquired Assets, free and clear of all Liens (except for Permitted Liens), to the fullest extent permissible under section 363(f) of the Bankruptcy Code.

Section 3.6 Intellectual Property.

(a) Section 3.6 of the Disclosure Schedule sets forth a true and complete list of (i) all Registered Intellectual Property that is owned by any Seller and used in or related to the Equipment or the use thereof (“Equipment Registered Intellectual Property”), (ii) all Contracts pursuant to which Seller obtains the right to use any Intellectual Property that is used in or related to the Equipment or the use thereof, and (iii) all Contracts pursuant to which Seller grants to any other Person the right to use any such Intellectual Property. Seller solely owns all of the Equipment IP free and clear of all Liens (except for Permitted Liens and subject to entry of the Sale Order), and all such Equipment Registered Intellectual Property is valid, subsisting and, to Seller’s Knowledge, enforceable, and is

not subject to any outstanding Decree adversely affecting Seller's use thereof or rights thereto. No third party holds any license, option or other rights with respect to any of the Equipment IP.

(b) To Seller's Knowledge and except as set forth on Section 3.6 of the Disclosure Schedule, none of the use of the Intellectual Property included in the Acquired Assets, nor the use of the Equipment of other Acquired Assets as used in the Business as currently conducted or as conducted by Seller at any time during the twelve (12) months prior to the date hereof, infringes upon or otherwise violates the Intellectual Property of any other Person. To Seller's Knowledge and except as set forth on Section 3.6 of the Disclosure Schedule, no third party is infringing any Intellectual Property owned by Seller and included in the Acquired Assets.

Section 3.7 Condition of Tangible Assets. The Equipment and other tangible assets included in the Acquired Assets are in good working order and condition, reasonable wear and tear excepted.

Section 3.8 Contracts. Subject to requisite Bankruptcy Court approvals and assumption by Seller of the applicable Contract in accordance with applicable Law (including satisfaction of any applicable Cure Costs) and except with respect to any Contract that has previously expired in accordance with its terms (or, after the date of this Agreement, is terminated, restated or replaced in compliance with this Agreement): (a) each Assumed Contract is valid and binding on the Seller and each other party thereto, and is in full force and effect, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity; and (b) except as a result of the commencement of the Chapter 11 Case, Seller has not given or received written notice of the existence of any material breach or material default on the part of Seller under any Assumed Contract.

Section 3.9 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 3.10 No Other Representations or Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS Article III (AS QUALIFIED, AMENDED, SUPPLEMENTED AND MODIFIED BY THE DISCLOSURE SCHEDULE), NEITHER SELLER NOR ANY OTHER PERSON MAKES (AND BUYER IS NOT RELYING UPON) ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLER, THE BUSINESS, THE ACQUIRED ASSETS (INCLUDING THE VALUE, CONDITION OR USE OF ANY ACQUIRED ASSET), OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AND SELLER DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY SELLER OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS Article III (AS QUALIFIED, AMENDED, SUPPLEMENTED AND MODIFIED BY THE DISCLOSURE SCHEDULE), SELLER (I) EXPRESSLY DISCLAIMS AND NEGATES ANY

REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE, RELATING TO THE CONDITION OF THE ACQUIRED ASSETS (INCLUDING ANY IMPLIED OR EXPRESSED WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF THE PROBABLE SUCCESS OR PROFITABILITY OF THE OWNERSHIP, USE OR OPERATION OF THE BUSINESS OR THE ACQUIRED ASSETS BY BUYER AFTER THE CLOSING), AND (II) DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT OR INFORMATION MADE, COMMUNICATED OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER BY ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, CONSULTANT OR REPRESENTATIVE OF SELLER). THE DISCLOSURE OF ANY MATTER OR ITEM IN THE DISCLOSURE SCHEDULE SHALL NOT BE DEEMED TO CONSTITUTE AN ACKNOWLEDGMENT THAT ANY SUCH MATTER IS REQUIRED TO BE DISCLOSED OR IS MATERIAL OR THAT SUCH MATTER WOULD RESULT IN A MATERIAL ADVERSE EFFECT.

ARTICLE IV
BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller as follows:

Section 4.1 **Organization of Buyer.** Buyer is a company duly organized, validly existing and in good standing under the Laws of Delaware and has all requisite 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 company 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, as of the Closing Date, no other company 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 Transaction.

(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. Assuming that 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. Assuming, to the extent that they are a party thereto, that each Related Agreement constitutes a valid and legally-binding obligation of Seller, 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 Transaction will (i) conflict with or result in a breach of the certificate of incorporation or 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, or require any notice under 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, rights or failures to give notice 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 the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Related Agreements.

Section 4.4 **Financial Capacity.** As of the Closing, Buyer (i) will have the resources (including sufficient funds available to pay the Purchase Price and any other expenses and payments incurred by Buyer in connection with the transactions contemplated by this Agreement) and capabilities (financial or otherwise) to perform its obligations hereunder, and (ii) will not have incurred any obligation, commitment, restriction or Liability of any kind, that would impair or adversely affect such resources and capabilities.

Section 4.5 **Good Faith Purchaser.** Buyer is a "good faith" purchaser, as such term is used in the Bankruptcy Code and the court decisions thereunder. Buyer is entitled to the protections of section 363(m) of the Bankruptcy Code with respect to all of the Acquired Assets. Buyer has negotiated and entered into this Agreement in good faith and without collusion or fraud of any kind.

Section 4.6 **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.

Section 4.7 **Condition of Acquired Assets.** Buyer hereby acknowledges and agrees that notwithstanding anything expressed or implied herein to the contrary, except as expressly set forth in Article III of this Agreement, Seller (including each of its directors, officers, employees, agents, shareholders, Affiliates, consultants, counsel, accountants and other representatives) make no express or implied representations or warranties whatsoever, including, without limitation, any representation or warranty as to physical condition or value of any of the Acquired Assets or the future profitability or future earnings performance of the Business. Buyer will accept the Acquired Assets at the Closing “AS IS,” “WHERE IS” AND “WITH ALL FAULTS”.

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 **Certain Efforts; Cooperation.**

(a) Each of the Parties shall use its commercially reasonable efforts, subject to the orders of the Bankruptcy Court, to make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the conditions to the obligations of the Parties to consummate the Contemplated Transaction set forth in Article VII), except as otherwise provided in Section 5.2.

(b) On and after the Closing, Seller and Buyer shall use their commercially reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done by Seller and Buyer all things necessary under applicable Law, and to execute and deliver such documents, ancillary agreements and other papers as may be required to carry out the provisions of this Agreement and consummate and make effective the Contemplated Transaction, including in order to more effectively vest in Buyer all of Seller’s right, title and interest to the Acquired Assets, free and clear of all Liens (other than Permitted Liens expressly contemplated by the Sale Order); provided, however, that Seller’s obligations hereunder shall only continue until the Chapter 11 Case is closed or dismissed.

Section 5.2 **Notices and Consents.**

(a) 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 Seller’s obligations hereunder shall only continue until the Chapter 11 Case is closed or dismissed.

(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 Transaction, 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, Seller's obligations hereunder shall only continue until the Chapter 11 Case is closed or dismissed.

(c) Subject to the terms and conditions set forth in this Agreement and applicable Law, Buyer and Seller shall (i) 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 Transaction, (ii) if practicable, permit the other Party the opportunity to review in advance all the information relating to Seller 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 incorporate the other Party's reasonable comments, (iii) 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 (iv) furnish the other Party with copies of all correspondences, filings, and written communications between them and their Affiliates 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 5.2(c) may be redacted before being provided to the other Party (A) to remove references concerning the valuation of Buyer, Seller, or any of their Affiliates, (B) financing arrangements, (C) as necessary to comply with contractual arrangements, and (D) as necessary to address reasonable privilege or confidentiality issues. Seller and Buyer may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 5.2(c) 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 5.3 Bankruptcy Actions.

(a) The Court has entered the Bid Procedures Order. The bid procedures to be employed with respect to this Agreement shall be those reflected in the Bid Procedures Order. Buyer agrees and acknowledges that Seller, including through its representatives, are and may continue soliciting inquiries, proposals or offers from third parties in connection with any Alternate Transaction.

(b) Seller shall provide appropriate notice of the Sale Hearing to all Persons entitled to notice, including, but not limited to, all taxing authorities in jurisdictions applicable to Seller.

(c) Seller and Buyer shall reasonably cooperate to assist in obtaining the Bankruptcy Court's entry of the Sale Order and any other Order reasonably necessary in connection with the transactions contemplated by this Agreement as promptly as reasonably practicable, including furnishing affidavits, non-confidential financial information, or other documents or information for filing with the Bankruptcy Court and making such advisors of Buyer and Seller and their respective affiliates available to testify before the Bankruptcy Court for the purposes of, among other things, providing adequate assurances of performance by Buyer as required under Section 365 of the Bankruptcy Code, and demonstrating that Buyer is a "good faith" Buyer under Section 363(m) of the Bankruptcy Code.

(d) Each of Seller and Buyer shall appear formally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the transactions contemplated by this Agreement and keep the other reasonably apprised of the status of material matters related to this Agreement, including, upon reasonable request promptly furnishing the other with copies of notices or other communications received by any Seller from the Bankruptcy Court or any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

(e) If the prevailing party at the conclusion of the Auction (such prevailing party, the "Successful Bidder") is not the Buyer and such Successful Bidder fails to consummate the applicable Alternate Transaction as a result of a breach or failure to perform on the part of such Successful Bidder, the next highest bidder (the "Backup Bidder") will be deemed to have the new prevailing bid, and, to the extent the Buyer is deemed the Backup Bidder in accordance with the terms of the Bid Procedures Order, Seller shall be required to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement; provided, however, that Buyer shall only be required to keep Buyer's bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable until the earlier of (i) the Outside Back-Up Date, or (ii) the date of closing of an Alternate Transaction with the Successful Bidder.

Section 5.4 **Notice of Developments.** From the date hereof until the Closing Date, Seller (with respect to itself), as the case may be, shall promptly disclose to Buyer, on the one hand, and Buyer shall promptly disclose to Seller, on the other hand, 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 material failure of any of Seller or Buyer 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 if such party objects to the disclosures contained in such notice prior to Closing.

Section 5.5 **Access.**

(a) Upon reasonable advance written request by Buyer, Seller shall permit Buyer and its Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Seller, to all premises, properties, personnel, Records and Contracts related to the Business, in each case, for the sole purpose of evaluating the Business; provided, however, that, for 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.

(b) All information obtained pursuant to this Section 5.5 shall be subject to the terms and conditions of the Confidentiality Agreement; provided, however, that following Closing, Buyer will have no obligations under the Confidentiality Agreement with respect to any information related to the Acquired Assets.

Section 5.6 **Press Releases and Public Announcements.** After notice to and consultation with Buyer, Seller shall be entitled to disclose, if required by applicable Law or by order of the Bankruptcy Court, this Agreement and all information provided by Buyer in connection herewith to the Bankruptcy Court, the United States Trustee, parties in interest in the Chapter 11 Case and other Persons bidding on assets of Seller. Other than statements made in the Bankruptcy Court (or in pleadings filed therein), Seller shall not 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 Buyer, which shall not be unreasonably withheld or delayed; provided, however, Seller, without the prior consent of Buyer, may issue such press release or make such public statement as may, upon the advice of counsel, be required by applicable Law or any Governmental Entity with competent jurisdiction. Buyer, without the prior consent of Seller, may issue such press release or make such public statement, filing or disclosure as may, upon the advice of counsel, be required by applicable Law or any Governmental Entity with competent jurisdiction.

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 Acquired Assets shall be free and clear of any Liens in the Acquired Assets, 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.

ARTICLE VI OTHER COVENANTS.

The Parties agree as follows with respect to the period from and after the Closing, provided that Seller's obligations hereunder shall only continue until the Chapter 11 Case is closed or dismissed:

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 Acquired Assets from Seller to Buyer and to minimize the disruption to the Business resulting from the Contemplated Transaction.

Section 6.2 **Further Assurances.** If 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, 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 Acquired Assets, 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 should have been transferred or assigned to Buyer as Acquired 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.

Section 6.3 **Recording of Intellectual Property Assignments.** All of the Intellectual Property Assignments shall be recorded and filed by Buyer with the appropriate Governmental Entities as promptly as practicable following the Closing.

Section 6.4 **Transfer Taxes.** To the extent not exempt under section 1146 of the Bankruptcy Code, then Buyer shall pay any stamp, documentary, registration, transfer, added-value or similar Tax (each, a "Transfer Tax") imposed under any applicable Law in connection with the transactions contemplated by this Agreement. 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 6.5 **Acknowledgements.** Buyer acknowledges that it has received from Seller certain projections, forecasts and prospective or third-party information relating to Seller, the Business, the Acquired Assets, or any related topics. Buyer acknowledges that (i) there are uncertainties inherent in attempting to make such projections and forecasts and in such information, (ii) Buyer is familiar with such uncertainties and is taking full responsibility for making its own evaluation of the adequacy and accuracy of all projections, forecasts and information so furnished, and (iii) neither Buyer nor any other Person shall have any claim against Seller, its Affiliates or its respective Representatives with respect thereto.

**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 Transaction in connection with the Closing is subject to satisfaction or waiver of the following conditions:

(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 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; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to “materiality” and “Material Adverse Effect” contained in such representations and warranties shall be disregarded;

(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 2.7 to be delivered to Buyer (or tendered subject only to Closing);

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

(d) Buyer or Parent, as applicable, shall have obtained any necessary board and shareholder approvals to consummate the Contemplated Transaction;

(e) the Sale Order shall have been entered by the Bankruptcy Court and such order shall not have been reversed, modified, amended or stayed, other than as may be mutually agreed by Buyer and Seller; and

(f) from the date of this Agreement until the Closing Date, there shall not have occurred and be continuing any Material Adverse Effect.

Section 7.2 **Conditions to Seller’s Obligations.** Subject to Section 7.3, Seller’s obligation to consummate the Contemplated Transaction in connection with the Closing is subject to satisfaction or waiver of the following conditions:

(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 respects, and (ii) each other

representation or warranty set forth in Article IV 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, would not reasonably be expected to materially prevent, restrict or delay the consummation of the Contemplated Transaction or by any Related Agreement; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to “materiality” and “Material Adverse Effect” contained in such representations and warranties shall be disregarded;

(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 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 Decree that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing; and

(d) the Sale Order entered by the Bankruptcy Court and such order shall not have been reversed, modified, amended or stayed, other than as may be mutually agreed by Buyer and Seller; 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) has 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 Transaction 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 reasonable best efforts or commercially reasonable efforts, as applicable, with respect to those matters contemplated by the applicable Sections of this Agreement to satisfy the conditions to the consummation of the Contemplated Transaction or other breach of a representation, warranty or covenant hereunder.

ARTICLE VIII TERMINATION.

Section 8.1 **Termination of Agreement.** This Agreement may be terminated and the Contemplated Transaction abandoned at any time prior to the Closing:

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

(b) by Buyer by giving written notice to Seller at any time prior to Closing (i) in the event Seller has breached any material covenant contained in this Agreement

in any material respect, Buyer has notified Seller of the breach, and the breach has continued without cure for a period of ten (10) Business Days after the notice of the breach, or (ii) in the event that any condition set forth in Section 7.1 shall become incapable of being satisfied by the Closing, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants hereof to be performed or complied with by it prior to the Closing, and such condition is not waived by Buyer;

(c) by Seller by giving written notice to Buyer at any time prior to Closing (i) in the event Buyer has breached any material covenant contained in this Agreement in any material respect, Seller has notified Buyer of the breach, and the breach has continued without cure for a period of ten (10) Business Days after the notice of the breach, or (ii) in the event that any condition set forth in Section 7.2 shall become incapable of being satisfied by the Closing, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants hereof to be performed or complied with by them prior to the Closing, and such condition is not waived by Seller;

(d) by Buyer, on the one hand, or Seller, on the other hand, if the Closing shall not have occurred by August 12, 2022; provided, however, that (i) Buyer shall not have the right to terminate this Agreement under this Section 8.1(d) or Section 8.1(b) if, at the time of such termination, Seller would then be entitled to terminate this agreement pursuant to Section 8.1(c) (subject only to delivery of notice and the opportunity to cure, if curable, required by Section 8.1(c)), and (ii) Seller shall not have the right to terminate this Agreement under this Section 8.1(d) or Section 8.1(c) if, at the time of such termination, Buyer would then be entitled to terminate this agreement pursuant to Section 8.1(b) (subject only to delivery of notice and the opportunity to cure, if curable, required by Section 8.1(b));

(e) by Buyer if (i) the Sale Order shall not have been entered by the Bankruptcy Court by August 10, 2022; (ii) if (y) Seller files any motion with the Bankruptcy Court seeking an order approving, or (z) the Seller files any Plan involving, any Alternate Transaction; or (iii) if Seller enters into a definitive agreement with a third party for an Alternate Transaction; or

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

i. the issuance of a final and non-appealable Order, decree, or ruling by a Governmental Authority to permanently restrain, enjoin or otherwise prohibit the Closing;

ii. the Buyer is not the Successful Bidder, and the Bankruptcy Court approves an Alternate Transaction with the Successful Bidder; provided that if Buyer is the Backup Bidder at the Auction, this Agreement shall not terminate until the Outside Back-Up Date; or

iii. the consummation of an Alternate Transaction.

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 Transaction shall be abandoned, without further action by Buyer or Seller.

Section 8.3 **Effect of Termination.**

(a) If any Party terminates this Agreement pursuant to Section 8.1, then all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I (Definitions), Article IX (Miscellaneous), and this Article VIII (Termination) shall survive any such termination) and no Party shall have any Liability to any other Party, as applicable, hereunder except as otherwise expressly set forth in this Agreement.

(b) Except as otherwise expressly set forth in this Agreement, nothing herein shall relieve any Party from Liability for any breach of covenant occurring prior to any termination of this Agreement.

(c) The Confidentiality Agreement shall survive any termination of this Agreement; provided, however, that following Closing, Buyer will have no obligations under the Confidentiality Agreement with respect to any information related to the Acquired Assets.

Section 8.4 **Deposit.**

(a) If this Agreement is terminated pursuant to any provision of Section 8.1, other than Section 8.1(c), then the Deposit shall be returned to Parent within two (2) Business Days of such termination.

(b) If this Agreement is terminated pursuant to Section 8.1 and Buyer is in material breach of this Agreement at the time of termination, then the Deposit shall be disbursed to Seller within two (2) Business Days of such termination (it being understood and agreed that disbursement of the Deposit to Seller shall be liquidated damages and Seller shall not have any other rights or remedies at law or in equity).

(c) Buyer and Seller hereby acknowledge that the obligation to deliver the Deposit (to the extent due hereunder) shall survive the termination of this Agreement and shall be paid pursuant to the terms herein.

ARTICLE IX
MISCELLANEOUS.

Section 9.1 **Expenses.** Except as otherwise provided in this Agreement 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 Transaction. Notwithstanding the

foregoing, in the event of any action or proceeding to interpret or enforce this Agreement, the prevailing Party in such action or proceeding (i.e., the Party who, in light of the issues contested or determined in the action or proceeding, was more successful) shall be entitled to have and recover from the non-prevailing Party such costs and expenses (including, but not limited to, all court costs and reasonable attorneys' fees) as the prevailing Party may incur in the pursuit or defense thereof.

Section 9.2 Entire Agreement. This Agreement constitutes the entire agreement among the Parties and supersedes 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, except for the Related Agreements.

Section 9.3 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 9.4 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 9.4 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 9.5 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 prior to Closing 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; provided, however, Buyer shall remain liable for all of its obligations under this Agreement after any such assignment.

Section 9.6 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 (i) when delivered personally to the recipient; (ii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (iii) when sent by email (with written

confirmation of transmission); or (iv) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Seller, then to:

Zosano Pharma Corporation
Attention: Steven Lo
34790 Ardentech Court
Fremont, CA 94555

with a copy to:

Greenberg Traurig, LLP
Terminus 200
3333 Piedmont Road NE
Suite 2500
Atlanta, GA 30305
Attention: John D. Elrod
Email: elrodj@gtlaw.com

If to Buyer, then to:

Emergex USA Corporation
3805 Old Easton Road
Doylestown, Pennsylvania 18902
Attention: Brian Pfister
Email: bp@emergexvaccines.com

with copies (which shall not constitute notice) to:

Emergex Vaccines Holding Limited
4/5 Dunmore Court
Wootton Road
Abingdon
OX13 6BH
United Kingdom
Attention: Sergio Pagani
Email: sp@emergexvaccines.com

Cooley LLP
55 Hudson Yards
New York, New York 10001
Attention: Erica J. Richards
Email: erichards@cooley.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 9.6.

Section 9.7 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 Litigation one Party commences against any other Party pursuant to this Agreement shall be brought exclusively in the Bankruptcy Court; provided that if the Bankruptcy Court is unwilling or unable to hear any such Litigation, 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 in New Castle County, Delaware, shall have exclusive jurisdiction over such Litigation.

Section 9.8 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 9.6.

Section 9.9 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 DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE RELATED AGREEMENTS OR THE CONTEMPLATED TRANSACTION OR THEREBY.

Section 9.10 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. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision 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 9.11 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 9.12 No Survival of Representations, Warranties and Agreements. None of the Parties' representations, warranties, covenants and other agreements in this Agreement, including any rights of the other Party or any third party arising out of any breach of such representations, warranties, covenants and other agreements, shall survive the Closing, except for (i) those covenants and agreements contained herein that by their terms apply or are to be performed in whole or in part after the Closing, (ii) this Article IX, and (iii) all defined terms set

forth in Article I that are referenced in the foregoing provisions referred to in clauses (i) and (ii) above.

Section 9.13 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 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 9.14 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 9.15 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 9.16 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Seller in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure with respect to any other sections of the Disclosure Schedule to which such disclosed matter reasonably relates, but only to the extent that such relationship is reasonably apparent on the face of the disclosure contained in the Disclosure Schedule. The listing of any matter shall expressly not be deemed to constitute an admission by Seller, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the disclosure of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Seller’s representations, warranties and/or covenants set forth in this Agreement. All

attachments to the Disclosure Schedule are incorporated by reference into the Disclosure Schedule in which they are directly or indirectly referenced. The information contained in the Disclosure Schedule is in all events subject to the Confidentiality Agreement.

Section 9.17 **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 9.18 **Counterparts; Facsimile and Email Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, each of which shall be deemed an original.

Section 9.19 **Time of Essence.** Time is of the essence under this Agreement.

[END OF PAGE]
[SIGNATURE PAGES FOLLOW]


**SIGNATURE PAGE TO
ASSET PURCHASE AGREEMENT**

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

SELLER:

ZOSANO PHARMA CORPORATION

By



Name: STEVEN LO
Title: CHIEF EXECUTIVE OFFICER

BUYER:

EMERGEX USA CORPORATION

By

Name:
Title:

**SIGNATURE PAGE TO
ASSET PURCHASE AGREEMENT**

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

SELLER:

ZOSANO PHARMA CORPORATION

By _____

Name:

Title:

BUYER:

EMERGEX USA CORPORATION

By _____



Name: Sergio Pagani

Title: CFO

EXHIBIT A

Form of Sale Order

See attached.

EXHIBIT B

Form of Bill of Sale

To be in form and substance reasonably satisfactory to the Parties.

EXHIBIT C

Form of Intellectual Property Assignment

To be in form and substance reasonably satisfactory to the Parties.

SCHEDULE 2.1

List of Certain Acquired Assets

Equipment:

All Equipment located at Seller's facility in Fremont, California or at third party facilities providing services to Seller located in Greenville, North Carolina; Menomonee Falls, Wisconsin; Devens, Massachusetts; Auburn, Alabama; Baumann Springs, Texas; and Niederbronn-Les-Bains, France, including Equipment in the following categories as described in folder number 1.6.2.5 in Seller's virtual data room (the "VDR"):

Lab Equipment
Manufacturing Equipment
Tooling
Computer
Parts & Tools
Reference Standards

Inventory:

at Seller's facility in Fremont, California or at third party facilities providing services to Seller located in Greenville, North Carolina; Menomonee Falls, Wisconsin; Devens, Massachusetts; Auburn, Alabama; Baumann Springs, Texas; and Niederbronn-Les-Bains, France, including all consumable supplies located at the Fremont, California facility.

Intellectual Property:

All of Seller's Intellectual Property, including all Intellectual Property described in VDR folder number 1.3.1.5.

Furniture and Fixtures:

All office furniture, communications equipment and fixtures located at Seller's facility in Fremont, California.

SCHEDULE 2.3

List of Assumed Contracts

That certain Intellectual Property License Agreement dated October 5, 2006 between ALZA Corporation and Seller, as successor to The Macroflux Corporation, as amended, modified, or supplemented from time to time

DISCLOSURE SCHEDULE

[Seller to provide]

Exhibit B

List of Assumed Contracts

SCHEDULE 2.3

List of Assumed Contracts

That certain Intellectual Property License Agreement dated October 5, 2006 between ALZA Corporation and Seller, as successor to The Macroflux Corporation, as amended, modified, or supplemented from time to time