

SIDLEY AUSTIN LLP
Thomas R. Califano (TX Bar No. 24122825)
William E. Curtin (*pro hac vice* pending)
Anne G. Wallace (*pro hac vice* pending)
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599
Email: tom.califano@sidley.com
wcurtin@sidley.com
anne.wallace@sidley.com

SIDLEY AUSTIN LLP
Charles M. Persons (TX Bar No. 24060413)
2021 McKinney Avenue, Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Facsimile: (214) 981-3400
Email: cpersons@sidley.com

*Proposed Attorneys for the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

EIGER BIOPHARMACEUTICALS, INC.,
*et al.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)
(Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER
(I) APPROVING THE DEBTORS' PROPOSED ADEQUATE ASSURANCE OF
PAYMENT FOR FUTURE UTILITY SERVICES, (II) PROHIBITING UTILITY
COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES,
AND (III) APPROVING THE DEBTORS' PROPOSED PROCEDURES FOR
RESOLVING ADDITIONAL ASSURANCE REQUESTS**

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors' service address is 2155 Park Boulevard, Palo Alto, California 94306.



Emergency relief has been requested. Relief is requested not later than 1:30 p.m. prevailing Central Time on April 3, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on April 3, 2024 at 1:30 p.m. prevailing Central Time in Courtroom 1, Floor 14, 1100 Commerce Street, Dallas, TX 75242-1496.

You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at 1.650.479.3207. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Jernigan’s home page. The meeting code is 479 393 582. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the “Electronic Appearance” link on Judge Jernigan’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as

Exhibit A (the “Order”), granting, among other things, the following relief:

- a. approving the Debtors’ proposed adequate assurance of payment for future utility services;
- b. prohibiting utility companies from altering, refusing, or discontinuing service;
- c. approving the Debtors’ proposed procedures for resolving additional adequate assurance requests; and
- d. granting related relief.

² A detailed description of the Debtors and their business, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of David Apelian in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the First Day Declaration.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the Court’s entry of a final order in connection with this motion.

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

4. The bases for the relief requested herein are sections 105(a) and 366 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, rule 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “Local Rules”), and the Procedures for Complex Cases in the Northern District of Texas.

Background

5. The Debtors are a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. All of the Debtors’ rare disease programs have FDA Breakthrough Therapy designation.

6. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these cases, and no statutory committee has been appointed.

Utility Services and Proposed Adequate Assurance

I. The Utility Services and Utility Companies.

7. In connection with the operation of their business, the Debtors obtain telecommunications, internet, and other utility services (collectively, the “Utility Services”), from a number of utility companies (collectively, the “Utility Companies”). A nonexclusive list of the Utility Companies that provide Utility Services to the Debtors as of the Petition Date (the “Utility Services List”) is attached hereto as **Exhibit B**.³ The relief requested herein is with respect to all Utility Companies providing Utility Services to the Debtors.

8. The Utility Companies provide Utility Services to the Debtors’ business operations located in California. The Debtors’ operations require the continued provision of the Utility Services to operate in the ordinary course and without disruption. Should any Utility Company refuse or discontinue service, even for a brief period, the Debtors’ business operations would be severely disrupted, and such disruption would jeopardize the Debtors’ ability to focus on running an efficient, value maximizing chapter 11 process. It is essential that the Utility Services continue uninterrupted during these chapter 11 cases.

9. In the past, the Debtors paid approximately \$1,900 each month for Utility Services, calculated based on the Debtors’ forecast of their average utility expenses for the 12-month period beginning February 1, 2023 and ending on January 31, 2024. The Debtors make most payments in arrears for Utility Services and make certain advance flat monthly charges for internet.

³ The Debtors’ landlord of the California property pays all other utility services not listed on the Utility Services List—such as water, electricity, gas, and garbage disposal—and the Debtors reimburse their landlord quarterly. As such, the Debtors’ only traditional utility payments are telecommunication services. As of the Petition Date, the Debtors were current on such reimbursements. The Debtors’ offices located in Ireland operate under a gross lease. As such, the Debtors do not make separate payments for Utility Services for these offices.

A. Proposed Adequate Assurance of Payment.

10. The Debtors intend to pay, when due, all undisputed postpetition obligations owed to the Utility Companies in a timely manner. The Debtors believe that cash held by the Debtors and cash generated in the ordinary course of business will provide the Debtors with sufficient liquidity to pay the Utility Service obligations in accordance with the Debtors' prepetition practices.

11. The Debtors believe that the foregoing satisfies the requirements under section 366 of the Bankruptcy Code. Nonetheless, as additional adequate assurance, the Debtors propose to deposit \$950 (the "Adequate Assurance Deposit") into one of the Debtors' bank accounts (the "Adequate Assurance Account") within 21 days of the Petition Date. The Adequate Assurance Deposit represents an amount equal to approximately one half of the Debtors' average utility balances per month. The Adequate Assurance Deposit will be held for the benefit of the Utility Companies in the Adequate Assurance Account for the duration of these chapter 11 cases and may be applied to any postpetition defaults in payment to the Utility Companies. The Adequate Assurance Deposit will be held by the Debtors, and no liens will encumber the Adequate Assurance Deposit or the Adequate Assurance Account.

12. The Adequate Assurance Deposit in conjunction with the Debtors' ability to pay for future Utility Services in accordance with their prepetition practices (collectively, the "Proposed Adequate Assurance") constitutes sufficient adequate assurance to the Utility Companies in full satisfaction of section 366 of the Bankruptcy Code.

B. The Adequate Assurance Procedures.

13. Any Utility Company that is not satisfied with the Proposed Adequate Assurance may make a request for additional or different adequate assurance of future payment (each an "Adequate Assurance Request") pursuant to the adequate assurance procedures set forth

in the proposed Order (the “Adequate Assurance Procedures”). The Adequate Assurance Procedures set forth a streamlined process for Utility Companies to address potential concerns with respect to the Proposed Adequate Assurance, while at the same time allowing the Debtors to continue their business operations uninterrupted. More specifically, the Adequate Assurance Procedures permit a Utility Company to object to the Proposed Adequate Assurance by filing and serving an Adequate Assurance Request upon certain notice parties.

14. The Debtors may then resolve any Adequate Assurance Request by mutual agreement with the Utility Company and without further order of the Court. If the Debtors determine that the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors will seek Court resolution of the Adequate Assurance Request. Unless and until a Utility Company files an objection or serves an Additional Assurance Request, such Utility Company shall be: (a) deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (b) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.

C. Modifications to the Utility Services List.

15. To the extent the Debtors identify new or additional Utility Companies or discontinue services from existing Utility Companies, the Debtors seek authority to add or remove parties from the Utility Services List. For any Utility Company added or removed from the Utility Services List, the Debtors will add to or subtract from the Adequate Assurance Deposit an amount equal to one half of the Debtors’ average monthly cost for each subsequently added or removed Utility Company as soon as practicable. For any Utility Company that is subsequently added to the Utility Services List, the Debtors will serve such Utility Company with a copy of the Court’s

Order, including the Adequate Assurance Procedures, and provide such Utility Company two-weeks' notice to object to the inclusion of such Utility Company on the Utility Services List. The Debtors request that the terms of such Order and the Adequate Assurance Procedures apply to any subsequently identified Utility Company.

Basis For Relief Requested

16. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) of the Bankruptcy Code requires the debtor to provide “adequate assurance” of payment for postpetition services in a form “satisfactory” to the utility company within 30 days of the filing of the petition, or the utility company may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Section 366(c)(1) of the Bankruptcy Code provides a non-exhaustive list of examples for what constitutes “assurance of payment.” 11 U.S.C. § 366(c)(1). Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of the debtor’s ability to pay. *See, e.g., In re Cont’l Common, Inc.*, 2011 WL 13238210, at *5 (N.D. Tex. Feb. 14, 2011) (“Section 366 [of the Bankruptcy Code] requires a determination that a utility is not subject to unreasonable risk of nonpayment, but does not require a guarantee of payment.”); *see also In re Tekoil & Gas Corp.*, No. 08-80270G3-1 I, 2008 WL 2928555, at *2 n.1 (Bankr. S.D. Tex. July 21, 2008) (“[A] debtor may continue to pay a utility, and a utility may continue to provide service, in the absence of an injunction preventing the utility from terminating service.”) (citing *In re Viking Offshore (USA) Inc.*, No. 08-31219-H3-1 I, 2008 WL 782449, at *3 n.3 (Bankr. S.D. Tex. Mar. 20, 2008)).

17. When considering whether a given assurance of payment is “adequate,” a court should examine the totality of the circumstances to make an informed decision as to whether the utility will be subject to an unreasonable risk of nonpayment. *See In re Keydata Corp.*,

12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (*citing In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979)). In determining the level of adequate assurance, however, “a bankruptcy court must focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. Power Co. v. Caldor*, 117 F.3d 646, 650 (2d Cir. 1997) (internal quotations omitted).

18. Here, the Utility Companies are adequately assured against any risk of nonpayment for future services. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course provide assurance of the Debtors’ payment of their future obligations. Termination of the Utility Services could result in the Debtors’ inability to operate their business to the detriment of all stakeholders. *See In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321–22 (Bankr. E.D. Pa. 1988) (noting that without utility service the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”).

19. Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance Procedures proposed herein, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores Inc.*, No. 08-35653, 2009 WL 484553, at *5 (Bankr. E.D. Va. Jan. 14, 2009) (stating that “the plain language of [section] 366 of the Bankruptcy Code allows the court to adopt the [p]rocedures set forth in the Utility Order”). Such Adequate Assurance Procedures are important because, without them, the Debtors “could be forced to address numerous requests by utility companies in an unorganized manner at a critical period in their efforts to reorganize.” *Id.* Here, notwithstanding a determination that the Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Companies believe they have under sections 366(b) and 366(c)(2) of the

Bankruptcy Code are wholly preserved under the Adequate Assurance Procedures. *See id.* at *5-6. The Utility Companies still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See id.* at *6. The Adequate Assurance Procedures, however, avoid a haphazard and chaotic process whereby each Utility Company could make an extortionate, last-minute demand for adequate assurance that would force the Debtors to pay under the threat of halting critical Utility Services. *See id.* at *5. The Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code, and thus the Debtors request that the Court grant the relief requested herein.

20. The Court possesses the power, under section 105(a) of the Bankruptcy Code, to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions of the Bankruptcy Code, particularly section 366 thereof.

21. Courts in this district have granted similar relief in chapter 11 cases. *See, e.g., In re Ebix, Inc. et al.*, Case No. 23-80004 (SWE) (Bankr. N.D. Tex. Dec. 19, 2023) [Docket No. 56] (approving procedures for utility companies to request adequate assurance in addition to deposits received from debtor); *In re Impel Pharmaceuticals Inc., et al.*, Case No. 23-80016 (SGJ) (Bankr. N.D. Tex. Dec. 21, 2023) [Docket No. 47] (same); *In re Corsicana Bedding, LLC, et al.*, Case No. 22-90016 (ELM) (Bankr. N.D. Tex. July 28, 2022) [Docket No. 212] (approving adequate assurance in form of deposit of approximately one half of average monthly utility costs and approving procedures for utility companies to request additional adequate assurance); *In re Rockall Energy Holdings, LLC, et al.*, Case No. 22-90000 (MXM) (Bankr. N.D. Tex. Apr. 5, 2022) [Docket No. 201] (same); *In re GVS Texas Holdings I, LLC, et al.*,

Case No. 21-31121 (MVL) (Bankr. N.D. Tex. July 28, 2021) [Docket No. 129] (same); *In re TriVascular Sales LLC*, Case No. 20-31840 (SGJ) (Bankr. N.D. Tex. Aug. 4, 2020) [Docket No. 188] (same). The present circumstances warrant similar relief. The Court should exercise its powers under sections 366 and 105(a) of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

Emergency Consideration

22. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Failure to receive the relief requested in this motion during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture, jeopardizing the Debtors’ ability to run a value maximizing sale process for the benefit of its creditors and parties in interest. The Debtors have satisfied the “immediate and irreparable” harm standard in Bankruptcy Rule 6003 and request that the Court approve the relief requested on an emergency basis.

Processing of Checks and Electronic Fund Transfers

23. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be honored inadvertently. Therefore, the Debtors request that the Court authorize and direct all applicable financial institutions at the Debtors’ request to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

24. The Debtors request that the Court enter an Order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h), which is necessary to implement the relief requested in this motion.

Reservation of Rights

25. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this motion or any Order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) a request for or approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's Order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

Notice

26. The Debtors will provide notice of this motion to the following: (a) the U.S. Trustee for the Northern District of Texas; (b) the holders of the thirty (30) largest unsecured claims against

the Debtors (on a consolidated basis); (c) Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders, and counsel thereto; (d) the United States Attorney's Office for the Northern District of Texas; (e) the Food and Drug Administration; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the state attorneys general for the states in which the Debtors conduct business; (i) the Utility Companies; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. No other or further notice is needed in light of the nature of the relief requested.

[Remainder of page intentionally left blank.]

The Debtors respectfully request entry of the Order granting the relief requested herein and granting such other relief as the Court deems appropriate under the circumstances.

Dated: April 1, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

Thomas R. Califano (TX Bar No. 24122825)
William E. Curtin (*pro hac vice* pending)
Anne G. Wallace (*pro hac vice* pending)
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599
Email: tom.califano@sidley.com
wcurtin@sidley.com
anne.wallace@sidley.com

and

Charles M. Persons (TX Bar No. 24060413)
2021 McKinney Avenue, Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Facsimile: (214) 981-3400
Email: cpersons@sidley.com

*Proposed Attorneys for the Debtors and
Debtors in Possession*

Certificate of Service

I certify that on April 1, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Thomas R. Califano
Thomas R. Califano

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

EIGER BIOPHARMACEUTICALS, INC.,
*et al.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**ORDER (I) APPROVING THE DEBTORS’
PROPOSED ADEQUATE ASSURANCE OF PAYMENT
FOR FUTURE UTILITY SERVICES, (II) PROHIBITING UTILITY
COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES,
AND (III) APPROVING THE DEBTORS’ PROPOSED PROCEDURES FOR
RESOLVING ADDITIONAL ASSURANCE REQUESTS**

Upon the motion (“Motion”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) for entry of an order (this “Order”)

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors’ service address is 2155 Park Boulevard, Palo Alto, California 94306.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

(a) approving the Debtors' Proposed Adequate Assurance of payment for future Utility Services; (b) prohibiting Utility Companies from altering, refusing, or discontinuing services; (c) approving the Adequate Assurance Procedures for resolving Additional Assurance Requests; and (d) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. The Debtors shall cause a copy of the Motion and this Order to be served on each Utility Company listed on the Utility Services List no later than two (2) business days after the date this Order is entered.

2. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases, subject to the Adequate Assurance Procedures. No liens shall encumber the Adequate Assurance Deposit or account.

3. The Debtors shall deposit funds in the Adequate Assurance Account in the amount set forth for each Utility Company in the column labeled "Proposed Adequate Assurance" on the Utility Services List attached as Exhibit B to the Motion.

4. The Adequate Assurance Deposit and the Adequate Assurance Procedures constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

5. If an amount relating to Utility Services provided postpetition by a Utility Company is unpaid, and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by giving notice to: (a) the Debtors; (b) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York , New York 10019, Attn: William Curtin (wcurtin@sidley.com) and Anne Wallice (anne.wallice@sidley.com); (c) the Office of the United States Trustee, Northern District of Texas, Region 6, 1100 Commerce Street, Room 976, Dallas, Texas 75242, Attn: [●]; (d) counsel to Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders, Bradley Arant Boult Cummings LLP, Attn: Roger G. Jones (rjones@bradley.com); and (e) counsel to any official committee appointed in these chapter 11 cases (collectively, the "Notice Parties"). Should the Debtors receive such a request, they shall provide a copy of said notice to counsel to any official committee appointed in these chapter 11 cases within one (1) business day of receipt. The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

6. The portion of the Adequate Assurance Deposit attributable to each Utility Company shall be returned to the Debtors on the earlier of (a) reconciliation and payment by the Debtors of the Utility Company's final invoice in accordance with applicable

nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Company and (b) the effective date of any chapter 11 plan confirmed in these chapter 11 cases. Additionally, if the Debtors terminate any of the Utility Services provided by a Utility Company, the Debtors may reduce the Adequate Assurance Deposit to reflect the termination of such Utility Services.

7. The following "Adequate Assurance Procedures" are hereby approved:
 - (a) Subject to paragraphs (b)-(f), the Debtors will deposit the Adequate Assurance Deposit in the aggregate amount of \$950 into the Adequate Assurance Account within 21 days after the Petition Date.
 - (b) Any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") on the Notice Parties. An Additional Assurance Request may be made at any time.
 - (c) Any Additional Assurance Request must (i) be in writing, (ii) identify the Utility Services provided, (iii) summarize the Debtors' payment history relevant to the affected account(s), including any security deposits, and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
 - (d) Upon the Debtors' receipt of any Additional Assurance Request, the Debtors shall promptly negotiate with such Utility Company to resolve such Utility Company's Additional Assurance Request.
 - (e) The Debtors may, and without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable.
 - (f) If the Debtors and the Utility Company are not able to reach an alternative resolution within 14 days of receipt of the Additional Assurance Request, the Debtors or the Utility Company may request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Company (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any such Determination Hearing, the Utility Company filing such Additional Assurance Request shall be prohibited from altering, refusing, or

discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

8. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures. Nothing in this Order shall prejudice the right of a Utility Company to object to the Adequate Assurance Procedures or propose alternative procedures.

9. Subject to the Adequate Assurance Procedures, the Utility Companies shall be: (a) deemed to have received adequate assurance of payment “satisfactory” to each such Utility Company in compliance with section 366 of the Bankruptcy Code; and (b) forbidden from discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

10. The Debtors are authorized, following the giving of two-weeks’ notice to the affected Utility Company and the Debtors having received no objection from any such Utility Company, to add or remove any Utility Company from the Utility Services List, and the Debtors shall add to or subtract from the Adequate Assurance Deposit an amount equal to one half of the Debtors’ average monthly cost for each subsequently added or removed Utility Company as soon as practicable. If an objection is received, the Debtors shall request a hearing before this Court. The Debtors shall only deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to remove from the Utility Services List, if and when (a) the two-week notice period has passed and the Debtors have not received any objection to such removal from such Utility Company, or (b) any such objection has been resolved consensually or by order of the Court. For Utility Companies that are added to the Utility Services List, the Debtors will cause a copy of this Order, including the Adequate Assurance Procedures,

to be served on such subsequently added Utility Company no later than five (5) business days after the Utility Company is added. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures.

11. The Adequate Assurance Procedures set forth herein are for all Utility Companies providing Utility Services to the Debtors and are not limited to those parties or entities listed on the Utility Services List.

12. The Debtors' service of the Motion or this Order upon the Utility Services List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

13. Notwithstanding the relief granted herein and any action taken pursuant to such relief, nothing in this Order shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this Order or any other order granting the relief requested in the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) an approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Any payment made pursuant to this Order is not intended to be nor should it be construed as an

admission as to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

14. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved in this Order.

15. The Debtors are authorized to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

18. The Debtors are authorized to take all such reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

END OF ORDER

Submitted By:

SIDLEY AUSTIN LLP

Thomas R. Califano (TX Bar No. 24122825)
William E. Curtin (*pro hac vice* pending)
Anne G. Wallice (*pro hac vice* pending)
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599
Email: tom.califano@sidley.com
wcurtin@sidley.com
anne.wallice@sidley.com

and

Charles M. Persons (TX Bar No. 24060413)
2021 McKinney Avenue, Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Facsimile: (214) 981-3400
Email: cpersons@sidley.com

*Proposed Attorneys for the Debtors and
Debtors in Possession*

Exhibit B

Utility Services List

Utility Services List

Utility Provider	Service(s) Provided	Account Number(s)	Average Monthly Expenditure	Proposed Adequate Assurance
Comcast	Internet	8155 20 009 0984651	\$575	\$287.50
AT&T Inc.	Internet	303710964	\$125	\$62.50
Star2Star Communications, LLC	Telecommunication Services	736059	\$1,200	\$600