

**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)

NOTICE OF FILING OF REVISED BIDDING PROCEDURES

PLEASE TAKE NOTICE:

On April 1, 2024, the Debtors filed a motion [Docket No. 13] (the “Bid Procedures Motion”) with the Court seeking entry of an order, among other things: (i)(a) approving the proposed bid procedures (the “Bid Procedures”) in connection with the Sale Transaction(s) of the Assets, (b) authorizing the Debtors to select Sentyln Therapeutics, Inc. or its designee as the Zokinvy Stalking Horse Purchaser substantially along the terms defined in the Zokinvy Stalking Horse APA, and approving Bid Protections relating to the Zokinvy Stalking Horse Purchaser; (c) approving the Bid Protections relating to the Remaining Assets Stalking Horse Purchaser(s), if any; (d) establishing the dates and deadlines relating to the Zokinvy Bid Deadline and the Remaining Asset Bid Deadline, Auction(s), and a Sale Hearing(s), (e) approving the form and manner of the notice of the Sale Transaction(s), the Bid Deadline(s), the Auction(s), and the Sale Hearing(s) (the “Sale Notice”), (f) approving the assumption and assignment procedures for any executory contracts or unexpired lease to be assumed by the Debtors in connection with the Sale Transaction(s), if any (the “Designated Contracts”) (the “Assignment and Assumption Procedures”), and (g) approving the form and manner of the potential assignment and assumption notice (the “Assignment Notice”), and (ii) granting related relief.

On April 5, 2024 the Court entered the *Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentyln Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if Any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and*

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.



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(B) Approving the Assumption and Assignment of Designated Contracts; And (III) Granting Related Relief [Docket No. 94] (the “Bid Procedures Order”).²

PLEASE TAKE FURTHER NOTICE that as a result of discussions and negotiations among the Debtors and the Progeria Research Foundation, Inc. (“PRF”) after the filing of the Bid Procedures Motion and entry of the Bid Procedures Order, the parties have agreed to revise the Bid Procedures to add PRF as a Consultation Party. A copy of the revised Bidding Procedures is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit B** is a redline of the Proposed Bidding Procedures Order reflecting changes from the original version filed with the Bid Procedures Motion.

PLEASE TAKE FURTHER NOTICE that copies of the Bid Procedures Motion, the Bid Procedures Order and all documents filed in these Chapter 11 cases are available free of charge by visiting <https://www.kccllc.net/Eiger>.

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² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Motion, the Bid Procedures, and the Bid Procedures Order, as applicable.

Dated: April 15, 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*

Exhibit A

Revised Bid Procedures

**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)

REVISED BID PROCEDURES

On April 1, 2024 (the “Petition Date”), the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

On April 1, 2024, the Debtors filed a motion [Docket No. 13] (the “Bid Procedures Motion”) with the Court seeking entry of orders, among other things: (i)(a) approving the proposed bid procedures (the “Bid Procedures”) in connection with the Sale Transaction(s) of the Assets, (b) authorizing the Debtors to select Sentyln Therapeutics, Inc. or its designee as the Zokinvy Stalking Horse Purchaser substantially along the terms defined in the Zokinvy Stalking Horse APA, and approving Bid Protections relating to the Zokinvy Stalking Horse Purchaser; (c) approving the Bid Protections relating to the Remaining Assets Stalking Horse Purchaser(s), if any; (d) establishing the dates and deadlines relating to the Zokinvy Bid Deadline and the Remaining Asset Bid Deadline, Auction(s), and a Sale Hearing(s), (e) approving the form and manner of the notice of the Sale Transaction(s), the Bid Deadline(s), the Auction(s), and the Sale Hearing(s) (the “Sale Notice”), (f) approving the assumption and assignment procedures for any executory contracts or unexpired lease to be assumed by the Debtors in connection with the Sale Transaction(s), if any (the “Designated Contracts”) (the “Assignment and Assumption Procedures”), and (g) approving the form and manner of the potential assignment and assumption notice (the “Assignment Notice”), and (ii) granting related relief.

On April 5, 2024 the Court entered the *Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentyln Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if Any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and*

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.

Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; And (III) Granting Related Relief [Docket No. 94] (the “Bid Procedures Order”),² which approved, among other things, the procedures set forth below pursuant to which the Debtors are authorized to sell all of substantially all of the Debtors’ assets (the “Assets”).

The Bid Procedures Order also authorized, among other things, the Debtors’ entry into that certain Asset Purchase Agreement, dated as of March 31, 2024 (as amended, supplemented, or otherwise modified by the parties thereto, the “Zokinvy Stalking Horse APA”)³ between Debtor Eiger BioPharmaceuticals, Inc., and Sentynl Therapeutics, Inc. (“Sentynl” or the “Zokinvy Stalking Horse Purchaser”), pursuant to which the Zokinvy Stalking Horse Purchaser has agreed to purchase the Zokinvy Assets and to assume certain liabilities of the Debtor Eiger BioPharmaceuticals, Inc., each as specifically described in the Stalking Horse APA and subject to the terms and conditions set forth therein. The Zokinvy Stalking Horse APA shall serve as the stalking horse bid (the “Zokinvy Stalking Horse Bid”) for the Zokinvy Assets, subject to higher and better bids in accordance with the terms and conditions of these Bid Procedures.

The Debtors are offering interested parties the opportunity to acquire some or all of the Assets. The Debtors’ representatives shall oversee the Sale (defined below) process.

ANY PARTY INTERESTED IN PROPOSING A POTENTIAL TRANSACTION SHOULD CONTACT THE DEBTORS’ PROPOSED INVESTMENT BANKER, SSG ADVISORS, LLC, IF THEY HAVE ANY QUESTIONS OR NEED ADDITIONAL INFORMATION:

**SSG ADVISORS, LLC
J. SCOTT VICTOR (JSVICTOR@SSGCA.COM)
TERESA C. KOHL (TKOHL@SSGCA.COM)**

I. KEY DATES

These Bid Procedures provide interested parties with the opportunity to qualify for, and participate in, one or more potential Auctions (as defined below) to be conducted by the Debtors and to submit competing bids (each, a “Bid”) for some or all the Assets. In accordance with these Bid Procedures, the Debtors will (a) coordinate with each Potential Bidder (as defined below) regarding the conduct of their respective due diligence, (b) evaluate bids from Potential Bidders, (c) negotiate any Bid made, and (d) make such other determinations as are provided for in these Bid Procedures (collectively, the “Bidding Process”).

The key dates for the sale process are as follows. The Debtors, after consultation with the Consultation Parties, may extend any of the deadlines in these Bid Procedures.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Motion, the Bid Procedures, and the Bid Procedures Order, as applicable.

³ A copy of the Stalking Horse APA is attached to the Bid Procedures Order as Exhibit 2.

| ZOKINVY SALE TRANSACTION MILESTONES | |
|--|--|
| EVENT OR DEADLINE | DATE AND TIME (ALL IN PREVAILING CENTRAL TIME) |
| Petition Date | P = 0 (April 1, 2024) |
| Bid Procedures Objection Deadline | Objections to the Bid Procedures may be made at the Bid Procedures Hearing |
| Bid Procedures Hearing | P + 3 (April 3, 2024) at 1:30 p.m. |
| Service and Publication of Sale Notice | 1 business day after entry of the Bid Procedures Order or as soon as reasonably practicable thereafter |
| Initial Zokinvy Cure Notice Deadline | P + 12 (April 12, 2024) at 4:00 p.m. |
| Zokinvy Bid Deadline ⁴ | P + 15 (April 15, 2024) at 4:00 p.m. |
| Zokinvy Sale Objection Deadline | P + 16 (April 16, 2024) at 4:00 p.m. |
| Zokinvy Cure Objection Deadline | P + 16 (April 16, 2024) at 4:00 p.m. |
| Determination of Zokinvy Qualified Bids | As soon as reasonably practicable following the Bid Deadline |
| Zokinvy Auction (if necessary) | P + 17 (April 17, 2024) at 9:00 a.m. |
| Deadline to File Notice of Zokinvy Winning Bid | As soon as reasonably practicable following the Auction |
| Post-Zokinvy Auction Objection Deadline | P + 20 (April 20, 2024) at 4:00 p.m. |
| Zokinvy Sale Hearing | P + 23 (April 23, 2024) at 9:30 a.m. |
| Anticipated Zokinvy Closing Date | P + 24 (April 24, 2024) |

| REMAINING ASSETS SALE TRANSACTION(S) MILESTONES | |
|---|--|
| EVENT OR DEADLINE | DATE AND TIME (ALL IN PREVAILING CENTRAL TIME) |
| Petition Date | P = 0 (April 1, 2024) |
| Bid Procedures Objection Deadline | Objections to the Bid Procedures may be made at the Bid Procedures Hearing |
| Bid Procedures Hearing | P + 3 (April 3, 2024) at 1:30 p.m. (prevailing Central Time) |
| Service and Publication of Sale Notice | 1 business day after entry of the Bid Procedures Order or as soon as reasonably practicable thereafter |
| Remaining Sale Transaction(s) Cure Notice Deadline | P + 65 (June 4, 2024) at 4:00 pm |
| Remaining Sale Transaction(s) Bid Deadline ⁵ | P + 71 (June 10, 2024) at 4:00 pm |

⁴ The Debtors reserve their right, in their own discretion, to move the deadline for the submission of qualified bids.

⁵ The Debtors reserve their right, in their own discretion, to move the deadline for the submission of qualified bids.

| REMAINING ASSETS SALE TRANSACTION(S) MILESTONES | |
|--|--|
| EVENT OR DEADLINE | DATE AND TIME (ALL IN PREVAILING CENTRAL TIME) |
| Remaining Sale Transaction(s) Objection Deadline | P + 73 (June 12, 2024) at 4:00 pm |
| Remaining Sale Transaction(s) Cure Objection Deadline | P + 73 (June 12, 2024) at 4:00 pm |
| Determination of Remaining Sale Transaction(s) Qualified Bids | As soon as reasonably practicable following the Bid Deadline |
| Remaining Sale Transaction(s) Auction (if necessary) | P + 75 (June 14, 2024) at 9:00 am |
| Deadline to File Notice of Remaining Sale Transaction(s) Winning Bid | As soon as reasonably practicable following the Auction |
| Post-Remaining Sale Transaction(s) Auction Objection Deadline | P + 79 (June 18, 2024) at 4:00 pm |
| Remaining Sale Transaction(s) Hearing | P + 81 (June 20, 2024) (subject to the Court's availability) |
| Anticipated Remaining Sale Transaction(s) Closing Date | P + 92 (July 1, 2024) |

II. SUBMISSIONS TO THE DEBTORS; CONSULTATION PARTIES

All submissions to the Debtors required or permitted to be made under these Bid Procedures must be directed to each of the following persons or entities unless otherwise provided (collectively, the "Notice Parties"):

- A. Debtors: Eiger BioPharmaceuticals, Inc., EBPI Merger Inc., EB Pharma LLC, Eiger BioPharmaceuticals Europe Limited, and EigerBio Europe Limited ("Eiger") (attn: David Apelian (dapelian@eigerbio.com)).
- B. Debtors' Proposed Counsel: Sidley Austin LLP ("Sidley") (attn: Thomas R. Califano (tom.califano@sidley.com), William E. Curtin (wcurtin@sidley.com), Anne G. Wallice (anne.wallice@sidley.com)); and
- C. Debtors' Proposed Investment Banker: SSG Advisors, LLC ("SSG") (attn: J. Scott Victor (jsvictor@ssgca.com); Teresa C. Kohl (tkohl@ssgca.com)).

The "Consultation Parties" as used in these Bid Procedures are: (a) Innovatus Life Sciences Lending Fund I, LP ("Innovatus"), in its capacity as Debtors' Prepetition Term Loan Lender and its counsel, so long as Innovatus does not become a bidder in the sale process, (B) advisors to the Official Committee of Unsecured Creditors, if any (the "Committee Advisors"), and (C) with respect to the Zokinvy Assets, The Progeria Research Foundation, Inc. ("PRF").

If a Consultation Party, in its capacity as such, receives material information in connection with Bids or bidders in a Sale Transaction process, which information is not provided to all Potential Bidders in such Sale Transaction process, such party shall be prohibited from being

deemed a Qualified Bidder in connection with such Sale Transaction process, unless such information is provided to all other Potential Bidders in such Sale Transaction process by the applicable bid deadline or promptly following receipt of such information by such party. For the avoidance of doubt, the Consultation Parties shall only be allowed to engage with bidders or discuss material information in connection with Bids directly through or with SSG.

In the event that any Consultation Party or an affiliate of the foregoing submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party or its affiliates established under these Bid Procedures will be waived, discharged, and released without further action; provided that the bidding party will have the same rights as any other Qualified Bidder set forth above.

III. MARKETING PROCESS

To facilitate a value-maximizing exit from these chapter 11 cases, the Debtors are conducting a marketing process for the sale or disposition of all or any portion of the Assets under section 363 of the Bankruptcy Code (the “Sale”). The Debtors retained SSG, a leading international investment banking and financial advisory firm, in March 2024 to serve as its proposed investment banker.

SSG will engage with additional potential bidders, and will continue to do so until a Sale Transaction(s) is approved by this Court. The Debtors may distribute (if not already distributed) to a person or entity (other than the Zokinvy Stalking Horse Purchaser) interested in purchasing any or all of the Assets (a “Potential Bidder”) an “Information Package” consisting of:

- a. a copy of the Bid Procedures, the Bid Procedures Order, and the Bid Procedures Motion;
- b. a form of non-disclosure agreement (“NDA”), substantially in the form attached as **Schedule 1**, and acceptable to the Debtors; and
- c. any other materials appropriate under the circumstances.

IV. OVERVIEW

The Debtors seek to sell substantially all of the Debtors’ Assets through the consummation of various sale transaction processes. Except as otherwise provided in any Winning Bidder’s purchase agreement, all of the Debtors’ right, title, and interest in and to the Assets shall be sold free and clear of all liens, claims, encumbrances and interests (collectively, the “Encumbrances”) to the maximum extent permitted by section 363 of the Bankruptcy Code (other than Permitted Liens and Assumed Liabilities), with these Encumbrances to attach to the proceeds of the Sale with the same validity and priority as such Encumbrances applied against the Assets.

V. POTENTIAL BIDDER REQUIREMENTS

To receive due diligence information, including full access to the Debtors’ electronic data room and to additional non-public information regarding the Debtors, or otherwise participate in

the bidding process or be considered for any purpose under the Bid Procedures, a Potential Bidder must deliver the following documents (collectively, the “Preliminary Bid Documents”) by email to the Notice Parties (unless the Debtors, in their business judgment and in consultation with the Consultation Parties, choose to waive any of the following requirements for any Potential Bidder):

- a. an executed NDA on terms acceptable to the Debtors;
- b. identity of the Potential Bidder, including its legal name, jurisdiction and form of organization, and details regarding the ownership and capital structure of the Potential Bidder, including details related to the Potential Bidder’s beneficial owners, ultimate beneficial owners, and controlling entities, and any of the principals, corporate officers, or other representatives that are authorized to appear for and act on behalf of the Potential Bidder with respect to the contemplated transaction; and description of the nature and extent of any due diligence the Potential Bidder wishes to conduct; and
- c. a description of the due diligence the Potential Bidder seeks to conduct;
- d. sufficient information, as reasonably determined by the Debtors, in consultation with the Consultation Parties, that the Potential Bidder (i) has or may reasonably obtain the financial capacity to close the Sale (including current audited or verified financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach) as well as an overview of any recent transactions), the adequacy of which must be acceptable to the Debtors; and
- e. sufficient information, as reasonably determined by the Debtors, that the Potential Bidder has the ability to receive any and all necessary governmental, licensing, regulatory, and other approvals.

Promptly after a Potential Bidder delivers Preliminary Bid Documents, the Debtors shall (i) determine and notify each Potential Bidder as to whether such Potential Bidder has submitted acceptable Preliminary Bid Documents, (ii) provide copies of any such notices to the Notice Parties and the Zokinvy Stalking Horse Purchaser, and (iii) provide copies of any such Preliminary Bid Documents to the Consultation Parties. Only those Potential Bidders that have submitted acceptable preliminary documentation (each, an “Acceptable Bidder”) to the reasonable satisfaction of the Debtors and their advisors, in consultation with the Consultation Parties, may submit bids to purchase the Assets.

VI. DUE DILIGENCE

The Debtors will provide instructions to Acceptable Bidders for accessing the virtual data room established by SSG in connection with the Sale Transaction(s) process (the “Data Room”). The Debtors will address all reasonable requests for additional information and due diligence access. The Debtors may refuse any party access to due diligence information, including access to the Data Room, in whole or in part and at any time, if the Debtors determine in their reasonable

business judgment after consultation with counsel that (i) access by such party may be harmful to the Debtors or their estates or (ii) such party has not established that it intends or has the capacity to consummate a Sale Transaction for the Assets in good faith.

The due diligence period and the Data Room shall be open until the Bid Deadline(s) (as defined below). After the Bid Deadline(s), the Debtors shall have no obligation to furnish due diligence information. The Debtors may, in the exercise of their reasonable business judgment and in consultation with their counsel and the Consultation Parties, extend a party's time to conduct due diligence.

The Debtors make no representation or warranty as to the information provided through this due diligence process or otherwise, including the documents in the Data Room, except as set forth in any executed definitive documents for the Sale.

Each Acceptable Bidder and Bidder (as defined below) shall comply with all reasonable requests with respect to information and due diligence access by the Debtors or their advisors regarding such Acceptable Bidder(s) or Bidder, as applicable, and its contemplated Sale Transaction(s).

II. NO COMMUNICATIONS AMONG BIDDERS

There shall be no communications regarding potential Bids, a potential Sale Transaction, or another potential transaction between or among any bidders, including the Stalking Horse Purchaser(s), and the Consultation Parties, unless the Debtors have previously authorized such communication in writing (such authorization, for the avoidance of doubt, email from the Debtors' counsel being sufficient). The Debtors reserve the right, in their reasonable business judgment, to disqualify any bidder that the Debtors believe in their reasonable judgment has communicated with another bidder or the Consultation Parties in violation of these Bid Procedures.

For the avoidance of doubt, the joining of Bids between Potential Bidders or Acceptable Bidders is permitted; *provided* that, if any Potential Bidders or Acceptable Bidders are interested in joining Bids, the Debtors' advisors will facilitate the communications between such parties and the potential joining of Bids.

VII. INDICATIONS OF INTEREST

The Debtors reserve the right to require Acceptable Bidders to submit written indications of interest prior to the Bid Deadline specifying, among other things, the Assets proposed to be acquired, the amount and type of consideration to be offered, and any other material terms to be included in a bid by such party; *provided* that the Consultation Parties shall have the right to review any indications of interest received by the Debtors. If an Acceptable Bidder fails to comply with any such request by the Debtors, the Debtors may deny such Acceptable Bidder further diligence access or deny such Acceptable Bidder further participation in the Auction process. The Debtors also reserve the right to exclude any Acceptable Bidder (prior to its submission of a Qualified Bid) from continuing in the Auction process if the Debtors determine that the consideration proposed to be paid by such Acceptable Bidder is insufficient.

VIII. BID DEADLINES

Bids (including all requirements to be considered a Qualified Bid (defined below)), as they relate to the Zokinvy Sale Transaction, must be submitted in writing to the Notice Parties so as to be actually received by no later than April 15, 2024 at 4:00 pm (prevailing Central Time) (the “Zokinvy Bid Deadline”).

Bids (including all requirements to be considered a Qualified Bid), as they relate to the Remaining Sale Transaction(s), must be submitted in writing to the Notice Parties so as to be actually received by not later than June 10, 2024 at 4:00 pm (prevailing Central Time) (the “Remaining Sale Transaction(s) Bid Deadline”).

IX. QUALIFIED BID REQUIREMENTS

Only bids (“Bids”) and bidders that satisfy the following conditions will be considered or permitted to participate in the bidding, Auction(s), or Sale(s) (each, a “Qualified Bid”) and the bidder(s) submitting a Qualified Bid, a “Qualified Bidder”):

- a. **Timeliness.** The Bid must be in writing and timely and properly submitted in accordance with the Bid submission process set forth below, including successful and timely delivery of the Good Faith Deposit (defined below).
- b. **Identity of Bidder.** The Bid must fully disclose the identity of each person or entity that is participating in the Bid (and the complete terms of such participation) and each such person or entity shall have delivered an executed NDA to the Debtors in accordance with the instructions set forth above. “Participation” in a Bid includes persons or entities that are equity holders in an entity specially formed for the purpose of effectuating a Sale Transaction for the Assets.
- c. **Proposed Transaction Perimeter and Purchase Price.** The Bid must propose a Sale Transaction for substantially all of the Debtors’ Assets or identify with the precision customary for a sale of this type the Assets included in such Bid and identify (a) the cash consideration to be paid (or the amount of any credit bid as allowed herein) for the Assets included in the Bid and (b) any liabilities to be assumed as part of the proposed acquisition, including a reasonable estimate of the cash value thereof (clauses (a) and (b) together, the “Proposed Purchase Price”).
- d. **Proposed APA.** The Bid must state that the bidder is prepared to consummate the transaction promptly following entry of an order approving the Sale and be accompanied by (a) a purchase and sale agreement executed by the bidder (the “Proposed APA”), a form of which will be available in the Data Room (the “Form APA”), (b) a redline of the Proposed APA against the Form APA, and (c) evidence of authorization and approval from the board (or comparable governing body) of each person or entity participating in the Bid with respect to the submission, execution, delivery, and performance of the Bid and Proposed APA.

- e. **Lack of Contingencies; Binding Bid.** The Bid must be (a) unqualified and not subject to any contingencies or conditions (including any further due diligence, material financing conditions, and internal approval (such as but not limited to board approval)), other than the contingencies or conditions in the Form APA, and (b) include a written commitment by the applicable Potential Bidder to serve as Back-Up Bidder in the event that such Bid is not selected as the Winning Bid and will be binding and irrevocable until (i) if such bid is the Winning Bid or a Backup Bid, the earlier of (x) the closing of the Sale or (y) 45 days after the conclusion of the Auction (or, if no Auction is held, 45 days after the date on which the Debtors file a notice of cancellation of Auction) or (ii) two (2) business days after entry of an order approving the Winning Bid and (if applicable) the Backup Bid for the applicable Assets (such order, a “Sale Order”).

- f. **Regulatory and Third-Party Approvals.** The Bid must set forth each regulatory and third-party approval required for the bidder to consummate the proposed Sale Transaction(s), if any, and the date by which the bidder expects to receive such approvals, and those actions the bidder will take to ensure receipt of such approvals as promptly as possible.

- g. **Adequate Assurance Information.** The Bid must include financial and other information sufficient for the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the bidder’s financial and other capabilities to consummate the transactions contemplated by the Proposed APA by no later than April 24, 2024 for Zokinvy Assets and July 1, 2024 for the Remaining Assets, including (a) the availability of funds to satisfy the Proposed Purchase Price and (b) information constituting adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of the Bankruptcy Code (if any), including for the avoidance of doubt, that certain *Amended and Restated Collaboration and Supply Agreement*, dated as of February 29, 2024 by and between Eiger BioPharmaceuticals, Inc. and PRF (the “Collaboration and Supply Agreement”) (“Adequate Assurance Information”), which information the Debtors may request be supplemented or altered such that it can be served on counterparties to any contracts or leases to be assumed and assigned in connection with the Sale that request such information. Provision of the Adequate Assurance Information to the Debtors shall, and shall be deemed to, constitute consent by the bidder for the Debtors to share such Adequate Assurance Information with the counterparties under Potential Assumed Contracts and Designated Contracts on a confidential basis; provided that the Debtors shall not be required to enter into any nondisclosure or similar agreement with such counterparties to provide the Adequate Assurance Information and shall not be liable for such counterparties’ failure to abide by the confidentiality of the Adequate Assurance Information.

- h. **Identification of Assigned Contracts.** The Bid must identify any and all executory contracts and unexpired leases to which the Debtors are a party that the bidder wishes to have assumed and assigned to it in connection with the Sale (if

any). The bidder shall be solely responsible for the payment of any cure costs required pursuant to section 365 of the Bankruptcy Code.

- i. **Management and Employee Obligations.** Each Bid must indicate whether the bidder intends to hire all or some of the employees who are primarily employed in connection with the Assets to be included in the proposed Sale Transaction.
- j. **As-is, Where-is.** Each Bid must include a written acknowledgement and representation that the bidder: (1) has had an opportunity to conduct any and all due diligence regarding the proposed Sale Transaction(s) prior to making its offer; (2) has relied solely upon its own independent review, investigation, or inspection of any documents in making its Bid; (3) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or their advisors or other representatives regarding the Sale Transaction or the completeness of any information provided in connection therewith or the Auction (if any); and (4) did not engage in any collusive conduct and acted in good faith in submitting its Bid.
- k. **Expected Closing Date.** Each Bid must state the Acceptable Bidder's expected date of closing the applicable Sale.
- l. **Lack of Bid Protections.** Unless consented to in writing by the Debtors and approved by the Court (and excluding the Stalking Horse Bid), the Bid must not request or entitle the bidder to any break-up fee, topping fee, expense reimbursement, or similar type of payment (and by submitting a bid, a bidder shall be deemed to have waived its right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code in any way related to the submission of its bid or these Bid Procedures) or indemnification by the Debtors in favor of the bidder.
- m. **Bidder's Contact Information.** The Bid must include contact information for the specific person(s) the Debtors should contact in the event they have questions regarding the bid.

By submitting a Bid, a bidder is deemed to acknowledge (and shall represent in any definitive document) that (i) it has had an opportunity to inspect and examine the Assets and to conduct any and all due diligence prior to submitting its bid, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of the Assets and any documents in submitting its bid, (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied by operation of law or otherwise, regarding the Debtors' business, the Assets, or the completeness of any information provided in connection with the Bid Procedures or the Sale process.

By submitting a Bid, each bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bid Procedures and to refrain from (A) submitting a Bid after conclusion of the Auction (if any) or (B) seeking to reopen the Auction (if any) once closed. **The submission of a Bid shall constitute a binding and irrevocable offer (a) for the Winning**

Bidder(s), until consummation of the Sale Transaction(s), (b) for the Backup Bidder (if any), as provided in these Bid Procedures, as provided herein, and (c) for any Bidder other than the Winning Bidder(s) and Backup Bidder, until two (2) business days after entry of an order approving the Winning Bid and (if applicable) the Backup Bid for the applicable Assets (such order, a “Sale Order”), and each Bid must include a written acknowledgement and representation to such effect.

As soon as reasonably practicable following the Bid Deadline, the Debtors, in consultation with the Consultation Parties, shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; provided that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction. The Stalking Horse Purchaser(s) shall be deemed to be a Qualified Bidder, the Stalking Horse Bid(s) shall be deemed a Qualified Bid, and the Stalking Horse Purchaser(s) may participate in the Auction with respect to the Assets.

The Debtors and their advisors shall maintain in confidence in accordance with the applicable executed NDA any information provided by a bidder that is designated as confidential, except as otherwise set forth in these Bid Procedures, and shall use such confidential information only in connection with the evaluation of Bids or otherwise in connection with the chapter 11 case or in accordance with the executed NDA. Notwithstanding the foregoing and any provisions in an executed NDA, the Debtors and Debtors’ advisors may disclose confidential information (i) with the prior written consent of the applicable bidder, (ii) to the applicable bidder, and (iii) as otherwise required or allowed by any applicable confidentiality agreement with respect to a particular bidder or other agreement, law, court, or other governmental order, or regulation, including, as appropriate, regulatory agencies.

X. BID SUBMISSION AND EVALUATION PROCESS; GOOD FAITH DEPOSITS

Concurrent with the submission of its Bid, and in no event later than the Bid Deadline, a bidder must deposit with the Debtors in cash 5% of the bidder’s Proposed Purchase Price (the “Good Faith Deposit”), which shall be refundable as described below. Bank information for the Debtors will be included in the Data Room. The Debtors, in their business judgment, after consultation with the Consultation Parties, may elect to waive or modify the requirement of a Good Faith Deposit on a case-by-case basis.

Each bidder shall comply with all reasonable requests by the Debtors for additional information and due diligence access regarding the ability of a bidder to consummate the Sale. A bidder’s failure to comply with such requests may be a basis for the Debtors to determine such bidder is not a Qualified Bidder and the associated Bid is not a Qualified Bid.

Notwithstanding anything herein to the contrary, the Debtors, in consultation with the Consultation Parties, reserve the right to work with (A) Potential Bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the applicable Bid Deadline and (B) Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid

prior to the conclusion of the Auction (if any). The Debtors reserve the right to cooperate with any Acceptable Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder and their Bid a single Qualified Bid for purposes of the Auction (if any)).

The Debtors shall determine, in their reasonable business judgment, in consultation with the Consultation Parties, (i) which Bids meet the criteria to qualify as a Qualified Bid and (ii) if there is more than one Qualified Bid, which Qualified Bid will serve as the baseline Bid at the commencement of the Auction to facilitate obtaining the highest and best value for the Debtors' estates. Any Bid that does not meet the criteria for a Qualified Bid set forth above shall be rejected as a non-conforming bid.

The Debtors shall determine, in their reasonable judgment after consultation with the Debtors' financial and legal advisors, and the Committee, if any, and with the Administrative Agent's consent, so long as no prepetition secured party has submitted a Qualified Bid and with such consent not to be unreasonably withheld, which of the Qualified Bids is likely to result in the highest and best value to the Debtors' estates (the "Initial Highest Bid").

Not later than 24 hours before the commencement of the Auction, to the extent feasible, the Debtors will provide to those participating in the Auction (the "Auction Participants") and the Consultation Parties a copy of the Initial Highest Bid. To allow the Auction Participants to evaluate the Initial Highest Bid, the Debtors shall use commercially reasonable efforts to disclose the value that, in their business judgment, and with the Administrative Agent's consent, so long as no prepetition secured party has submitted a Qualified Bid and with such consent not to be unreasonably withheld, and in consultation with the Committee, if any, they place on the Initial Highest Bid. The Debtors shall also use commercially reasonable efforts to disclose to each Auction Participant the value that, in their business judgment, they place on such Auction Participant's Qualifying Bid.

XI. STALKING HORSE AND BID PROTECTIONS

Notwithstanding anything herein to the contrary, the Zokinvy Stalking Horse Purchaser shall not be required to submit an additional Qualified Bid prior to an Auction. To provide the Zokinvy Stalking Horse Purchaser with an incentive to participate in a competitive process and to compensate the Zokinvy Stalking Horse Purchaser for (i) performing substantial due diligence and incurring the expenses related thereto and (ii) entering in the Zokinvy Stalking Horse APA with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors have agreed to, pursuant to the terms of the Bid Procedures Order and the Zokinvy Stalking Horse APA, bid protections in the aggregate of three percent (3.0%) of the Base Price (the "Zokinvy Bid Protections").

Should the Debtors designate a Stalking Horse Purchaser for the Remaining Assets, the Bid Protections of the Stalking Horse Bid shall not exceed a maximum of 5 percent (the "Remaining Assets Bid Protections").

XII. NO QUALIFIED BIDS

If no Qualified Bids other than the Zokinvy Stalking Horse Bid are received by the Bid Deadline(s), then the Debtors shall cancel the Auction(s) and designate the Zokinvy Stalking Horse Bid as the Winning Bid as to the Zokinvy Assets, pursue entry of a Sale Order approving the Sale of the Zokinvy Assets to the Zokinvy Stalking Horse, and pursue alternative transaction(s) for the disposition of the Remaining Assets. If the Debtors make such a determination, the Debtors shall file a notice with the Bankruptcy Court within one (1) business day of making such determination.

XIII. AUCTION

If the Debtors receive two or more Qualified Bids with respect to the same Assets by the applicable Bid Deadline(s), the Debtors may, after consultation with the Consultation Parties, conduct an Auction to determine the Winning Bidder(s) (or Back-Up Bidder, as applicable) with respect to such Assets. In such event, the Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' business judgment, the highest or otherwise best Qualified Bid or combination of Qualified Bids for particular Assets (the "Starting Bid"). When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate and/or relevant to the value of the Qualified Bid to the Debtors' estates: (a) the amount and nature of the total consideration; (b) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; and (d) the tax consequences of such Qualified Bid. Prior to the start of the Auction, the Debtors shall notify the Stalking Horse Purchaser(s) and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Purchaser(s) and each Qualified Bidder.

If an Auction is held for the Zokinvy Assets, such Auction shall take place on April 17, 2024, at 9:00 a.m. (prevailing Central Time), via remote video or in person at the Debtors' election and shall be conducted in a timely fashion according to the procedures set forth below (the "Auction Procedures").

If an Auction is held for the Remaining Assets, such Auction shall take place on June 14, 2024, at 9:00 a.m. (prevailing Central Time), via remote video or in person at the Debtors' election and shall be conducted in a timely fashion according to the Auction Procedures.

The Auction(s) will be subject to the following rules:

- a. **Attendance and Participation.** Only Qualified Bidders may participate in or make subsequent Bids at the Auction. Only the Debtors, Qualified Bidders, Consultation Parties, the United States Trustee, and such parties' representatives and advisors may attend the Auction; *provided* that Qualified Bidders may appear through a duly authorized representative bearing a valid and enforceable power of attorney or other written proof evidencing their ability to bind the applicable Qualified Bidder, which document(s) shall be delivered to the Debtors prior to the commencement of the Auction.

- b. **Confirmation of Good Faith.** Each Qualified Bidder will be required to confirm on the record at the Auction that (a) it has not engaged in any collusion with respect to the bidding or Sale and (b) its Qualified Bid and any subsequent Bid, is a good-faith bona fide offer and it intends to consummate the proposed sale if selected as a Winning Bidder.
- c. **Transcript.** The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Winning Bid (and Backup Bid, as applicable).
- d. **Terms of Overbids.**
 - a. Minimum Overbid Requirement. Only incremental Bids that comply with the Bid Procedures shall be considered “Overbids.” At the commencement of the initial solicitation of Overbids, the Debtors shall announce the minimum increment by which any Overbid must exceed the applicable Starting Bid. The minimum overbid increment for the second bid for the Zokinvy Assets is \$375,000, and the minimum overbid increment for the second bid for the Remaining Assets shall be announced by the Debtors prior to or at the commencement of the Auction of the Remaining Assets. At the commencement of each subsequent round of solicitation of Overbids, the Debtors shall announce the minimum increment by which any Overbid must exceed the Prevailing Highest Bid (as defined below) at such time. The Debtors may, in their reasonable business judgment announce increases or reductions to the applicable minimum Overbid increment at any time during the Auction.
 - b. Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline by which time any Overbids must be submitted to the Debtors (an “Overbid Round Deadline”); provided that the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, may extend any Overbid Round Deadline.
 - c. Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable in the aggregate to the Debtors’ estates than any prior Qualified Bid or Overbid, as determined in the Debtors’ business judgment, in consultation with the Consultation Parties, but shall otherwise comply with the terms of the Bid Procedures. For the avoidance of doubt, the Zokinvy Stalking Horse Purchaser shall not be required to include an amount in cash necessary to satisfy the Zokinvy Bid Protections as part of any Overbid.
 - d. Announcing Highest Bid. Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors, with the Administrative Agent’s consent, so long as no prepetition secured party has submitted a Qualified Bid and with such consent not to be unreasonably withheld, have

identified an Overbid as being higher or otherwise better than the Starting Bid, in the initial Overbid round, or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all applicable Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid.

- e. **Consideration of Overbids.** The Debtors reserve the right, in their business judgment, in consultation with the Consultation Parties, to adjourn the Auction one or more times, to, among other things (1) facilitate discussions between the Debtors and Qualified Bidders, (2) allow Qualified Bidders the opportunity to consider how they wish to proceed, and (3) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent financing commitments to consummate the proposed Sale Transaction(s) at the prevailing Overbid amount.
- f. **No Round-Skipping.** To remain eligible to participate in the Auction, in each round of bidding, each Qualified Bidder must submit an Overbid with respect to such round of bidding and to the extent a Qualified Bidder fails to submit an Overbid with respect to such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction; provided that the Debtors may waive such requirement in their business judgment.
- g. **Reimbursable Expenses for the Stalking Horse Purchaser(s).** For the Auction, the Debtors will take into account the Bid Protections in each round of bidding. The Bid Protections shall be payable as set forth in the Bid Procedures Order.
- h. **Closing the Auction(s).** The Auction(s) shall continue until there is only one Qualified Bid that the Debtors determine, in their business judgment and in consultation with their advisors and the Committee, if any, and with the consent of the Administrative Agent, so long as no prepetition secured party has submitted a Qualified Bid and with such consent not to be unreasonably withheld, to be the highest or otherwise best Qualified Bid for the applicable Assets. Such Qualified Bid shall be designated the “Winning Bid” for such Assets and the Qualified Bidder submitting such Qualified Bid shall be designated the “Winning Bidder,” at which time the Auction with respect to such Assets shall be closed. The Debtors, in consultation with their advisors and the Consultation Parties, may also designate a bid that is the next highest or otherwise best after the Winning Bid (the “Backup Bid”) and the Qualified Bidder submitting the Backup Bid shall be the backup bidder (the “Backup Bidder”). In no case shall such Auction(s) close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. The Debtors’ designation of a Qualified Bid as a Winning Bid (or Backup Bid, as applicable) shall be subject to and conditioned on the Bankruptcy Court’s approval of such Winning Bid (or Backup Bid, as applicable) and the Sale Transaction(s)

contemplated thereby. As soon as reasonably practicable after the designation of a Winning Bid (or Backup Bid, as applicable), the Debtors shall finalize definitive documentation to implement the terms of such Winning Bid (or Backup Bid, as applicable) and cause such definitive documentation to be filed with the Bankruptcy Court.

- i. **Credit Bidding.** Any party that has a valid and perfected lien on any of the Assets (a “Secured Creditor”) shall have the right to credit bid all or any portion of the Secured Creditor’s claim on a dollar-for-dollar basis pursuant to section 363(k) of the Bankruptcy Code; provided that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured and only to the extent such credit bid is permitted under any relevant agreements and the Bankruptcy Code; provided further, however, that any credit bid must include a cash component equal to or exceeding the amount of the Bid Protections. Subject to Section II of these Bid Procedures, any Secured Creditor shall be deemed to be a Qualified Bidder, shall be deemed to have submitted a Qualified Bid, and may participate in the Auction with respect to the assets, provided that no other party other than the Administrative Agent may credit bid on the Collateral (as defined in the Cash Collateral Order) unless the entire amount of the allowed prepetition term loan secured indebtedness will be paid in full in cash on the closing of such credit bid transaction.
- j. **Rejection of Bids.** The Debtors in their reasonable business judgment, in consultation with the Consultation Parties, may reject, at any time before entry of an order of the Bankruptcy Court approving a Successful Bid (or Back-Up Bid, as applicable), any Bid that the Debtors determine is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bankruptcy Code and/or the Bid Procedures, or (3) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders.
- k. **Adjustment of Deposit.** The Winning Bidder(s) and Backup Bidder(s) shall have one (1) business day from the announcement of the Winning Bid and Backup Bid to deposit with the Debtors in cash an amount sufficient to increase such bidder’s Good Faith Deposit to 5% of the Proposed Purchase Price provided for in the Winning Bid or Backup Bid, as applicable.
- l. **Announcement of Winning Bid and Backup Bid.** As soon as reasonably practicable after conclusion of the Auction(s), the Debtors shall file with the Court a notice of the results of the Auction(s) (the “Notice of Winning Bid”), which shall include (i) a copy of the Winning Bid and Backup Bid, (ii) the identities of the Winning Bidder(s) and Backup Bidder(s), and (iii) a list of all executory contracts and unexpired leases proposed to be assumed and assigned as part of the Sale (if any) and the cure cost pursuant to section 365(b) associated with each.

The Debtors, in consultation with the Consultation Parties, may adopt such other rules for the Auction(s) (including procedural rules and rules that may depart from those set forth herein) that they reasonably determine will result in the highest or otherwise best value for the Debtors’

estates and that are not inconsistent with any Court order; *provided* that any changed or additional rules of the Auction(s) are not materially inconsistent with these Bid Procedures, do not favor one Qualified Bidder over another, and are communicated to all participants substantially simultaneously at or prior to the Auction(s).

XIV. SALE

A hearing to approve the Sale of the Assets to the Winning Bidder(s) in accordance with the terms of the Winning Bid(s) and pursuant to the Proposed APA associated therewith as it relates to the Zokinvy Sale Transaction (the “Zokinvy Sale Hearing”) will take place on April 23, 2024 at 9:30 a.m. (prevailing Central time).

A hearing(s) to approve the Sale(s) of the Assets to the Winning Bidder(s) in accordance with the terms of the Winning Bid(s) and pursuant to the Proposed APA associated therewith as it relates to the Remaining Sale Transaction(s) (the “Remaining Sale Transaction(s) Hearing”) will take place on June 20, 2024 at 2:30 p.m. (prevailing Central time).

- a. If, for any reason, a Winning Bidder(s) fails to timely consummate the purchase of the Assets, the Debtors, in consultation with the Committee, if any, and with the Administrative Agent’s consent, not to be unreasonably withheld, may seek to consummate a Sale to the Backup Bidder(s) in accordance with the terms of the Backup Bid(s) and pursuant to the Proposed APA(s) associated therewith without further approval by the Court (in which case the Backup Bidder shall be deemed the Winning Bidder).
- b. If a Winning Bidder fails to timely consummate the purchase of the Assets due to a breach or failure to perform on the part of the Winning Bidder, the defaulting Winning Bidder’s Good Faith Deposit shall be forfeited to the Debtors and the Debtors specifically reserve the right to seek all available damages from the defaulting Winning Bidder.
- c. The Backup Bid(s) and the obligation of the Backup Bidder(s) to consummate the purchase of the Assets shall remain open and in full force, including with respect to the Backup Bidder’s Good Faith Deposit, until the earlier of (a) the closing of a Sale of the Assets to a Winning Bidder or Backup Bidder or (b) 45 days after the conclusion of the Auction (or, if no Auction is held, 45 days after the date on which the Debtors file a notice of cancellation of Auction).
- d. The Winning Bidder(s) and Backup Bidder(s) shall appear at the Sale Hearing(s) personally or through a duly authorized representative who shall be prepared to testify in support of the Winning Bid(s) and the Winning Bidder’s, or Backup Bid(s) and Backup Bidder’s, ability to close the Sale in a timely manner and provide adequate assurance of future performance under any and all executory contracts and unexpired leases to be assumed and assigned as part of the Sale.

Any objections to the proposed Zokinvy Sale Transaction, including objections to the Winning Bidder’s or Backup Bidder’s adequate assurance of future performance and the proposed

assumption and assignment of any executory contract or unexpired lease (including any proposed cure cost), must be filed with the Court no later than April 16, 2024 at 4:00 pm (prevailing Central time).

Any objections to the proposed Remaining Sale Transaction(s), including objections to the Winning Bidder's or Backup Bidder's adequate assurance of future performance and the proposed assumption and assignment of any executory contract or unexpired lease (including any proposed cure cost), must be filed with the Court no later than June 18, 2024 at 4:00 pm (prevailing Central time).

The Debtors and the Winning Bidder(s) shall consummate the Zokinvy Sale Transaction no later than April 24, 2024; and consummate the Remaining Sale Transaction(s) no later than July 1, 2024. At the closing of the Sale(s), the Winning Bidder(s) will be entitled to a credit for the amount of its Good Faith Deposit.

XV. RETURN OF GOOD FAITH DEPOSITS

The Good Faith Deposits shall be held in a non-interest-bearing account established and held by, and in the name of, the Debtors. The Good Faith Deposits are not property of the Debtors or their estates.

Within five (5) business days of determining a Bid does not qualify as a Qualified Bid, the Debtors shall return by check or wire the full amount of the Good Faith Deposit submitted in connection with such non-qualified Bid. Within five (5) business days of the conclusion of the Auction, the Debtors shall return by check or wire the full amount of each Good Faith Deposit submitted by a party that is not selected as the Winning Bidder(s) or Backup Bidder(s).

Unless a Sale is consummated with such bidder or the Good Faith Deposit is forfeited as provided above, the full amount of the Winning Bidder's or Backup Bidder's Good Faith Deposit, as applicable, shall be returned by check or wire within five business days of earlier of (i) the closing of the Sale or (ii) 45 days after the conclusion of the Auction (or, if no Auction is held, 45 days after the date on which the Debtors file a notice of cancellation of Auction).

All Good Faith Deposits shall be returned within five business days of the entry of an order dismissing or converting the chapter 11 case under section 1112 of the Bankruptcy Code if such dismissal or conversion occurs prior to the consummation of a Sale.

XVI. BID PROTECTIONS

No bidder, whether or not a Qualified Bidder, shall be entitled to bid protections, other than the Zokinvy Bid Protections or Remaining Assets Bid Protections, unless consented to in writing by the Debtors and approved by the Court. The Debtors reserve the right to seek, in consultation with their advisors and the Consultation Parties, approval of bid protections from the Court on emergency notice to the extent the Debtors determine, in their business judgment, that such bid protections are necessary or advisable under the circumstances to facilitate obtaining the highest and best value for the Debtors' estates.

XVII. RESERVATION OF RIGHTS

The Debtors reserve their rights to modify these Bid Procedures in their business judgment, subject to the consent of the Administrative Agent, not to be unreasonably withheld, and in consultation with the Committee, if any, in any manner that will best promote the goals of these Bid Procedures or impose additional customary terms and conditions on the Sale(s), including extending the deadlines set forth herein, adjourning the Auction(s) or the Sale Hearing(s), adding procedural rules that are reasonably necessary or advisable under the circumstances to conduct the Auction(s), cancelling the Auction(s), and rejecting any or all Bids or Qualified Bids.

XVIII. CONSENT TO JURISDICTION

All Qualified Bidders at the Auction(s) shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction(s) or the construction and enforcement of these Bid Procedures.

XIX. FIDUCIARY DUTIES

Notwithstanding anything to the contrary in the Bid Procedures or any document filed with or entered by the Bankruptcy Court, nothing in the Bid Procedures or the Bid Procedures Order shall require a Debtor or its board of directors, board of managers, or similar governing body to take any action or to refrain from taking any action with respect to any Sale Transaction(s) or the Bid Procedures to the extent such Debtor or governing body determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Further, notwithstanding anything to the contrary in the Bid Procedures or any document filed with or entered by the Bankruptcy Court, until the closing of the Auction(s) (if any), the Debtors and their respective directors, managers, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (A) consider, respond to, and facilitate unsolicited alternate proposals for sales or other transactions involving any or all of the Assets (each, an "Alternate Proposal"); (B) provide access to non-public information concerning the Debtors to any entity or enter into reasonable and customary confidentiality agreements or nondisclosure agreements with any entity; (C) maintain or continue discussions or negotiations with respect to Alternate Proposals; (D) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiations of Alternate Proposals; and (E) enter into or continue discussions or negotiations with any person or entity regarding any Alternate Proposals.

Dated April 15, 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. 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

Revised Bid Procedures Redline

**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)

REVISED BID PROCEDURES

On April 1, 2024 (the “Petition Date”), the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

On April 1, 2024, the Debtors filed a motion [Docket No. 13] (the “Bid Procedures Motion”) with the Court seeking entry of orders, among other things: (i)(a) approving the proposed bid procedures (the “Bid Procedures”) in connection with the Sale Transaction(s) of the Assets, (b) authorizing the Debtors to select Sentynl Therapeutics, Inc. or its designee as the Zokinvy Stalking Horse Purchaser substantially along the terms defined in the Zokinvy Stalking Horse APA, and approving Bid Protections relating to the Zokinvy Stalking Horse Purchaser; (c) approving the Bid Protections relating to the Remaining Assets Stalking Horse Purchaser(s), if any; (d) establishing the dates and deadlines relating to the Zokinvy Bid Deadline and the Remaining Asset Bid Deadline, Auction(s), and a Sale Hearing(s), (e) approving the form and manner of the notice of the Sale Transaction(s), the Bid Deadline(s), the Auction(s), and the Sale Hearing(s) (the “Sale Notice”), (f) approving the assumption and assignment procedures for any executory contracts or unexpired lease to be assumed by the Debtors in connection with the Sale Transaction(s), if any (the “Designated Contracts”) (the “Assignment and Assumption Procedures”), and (g) approving the form and manner of the potential assignment and assumption notice (the “Assignment Notice”), and (ii) granting related relief.

On ~~4~~April 5, 2024 the Court entered the *Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentynl Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if Any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of*

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.

Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; And (III) Granting Related Relief [Docket No. [194](#)] (the “Bid Procedures Order”),² which approved, among other things, the procedures set forth below pursuant to which the Debtors are authorized to sell all of substantially all of the Debtors’ assets (the “Assets”).

The Bid Procedures Order also authorized, among other things, the Debtors’ entry into that certain Asset Purchase Agreement, dated as of March 31, 2024 (as amended, supplemented, or otherwise modified by the parties thereto, the “Zokinvy Stalking Horse APA”)³ between Debtor Eiger BioPharmaceuticals, Inc., and Sentyln Therapeutics, Inc. (“Sentyln” or the “Zokinvy Stalking Horse Purchaser”), pursuant to which the Zokinvy Stalking Horse Purchaser has agreed to purchase the Zokinvy Assets and to assume certain liabilities of the Debtor Eiger BioPharmaceuticals, Inc., each as specifically described in the Stalking Horse APA and subject to the terms and conditions set forth therein. The Zokinvy Stalking Horse APA shall serve as the stalking horse bid (the “Zokinvy Stalking Horse Bid”) for the Zokinvy Assets, subject to higher and better bids in accordance with the terms and conditions of these Bid Procedures.

The Debtors are offering interested parties the opportunity to acquire some or all of the Assets. The Debtors’ representatives shall oversee the Sale (defined below) process.

ANY PARTY INTERESTED IN PROPOSING A POTENTIAL TRANSACTION SHOULD CONTACT THE DEBTORS’ PROPOSED INVESTMENT BANKER, SSG ADVISORS, LLC, IF THEY HAVE ANY QUESTIONS OR NEED ADDITIONAL INFORMATION:

**SSG ADVISORS, LLC
J. SCOTT VICTOR (JSVICTOR@SSGCA.COM)
TERESA C. KOHL (TKOHL@SSGCA.COM)**

I. KEY DATES

These Bid Procedures provide interested parties with the opportunity to qualify for, and participate in, one or more potential Auctions (as defined below) to be conducted by the Debtors and to submit competing bids (each, a “Bid”) for some or all the Assets. In accordance with these Bid Procedures, the Debtors will (a) coordinate with each Potential Bidder (as defined below) regarding the conduct of their respective due diligence, (b) evaluate bids from Potential Bidders, (c) negotiate any Bid made, and (d) make such other determinations as are provided for in these Bid Procedures (collectively, the “Bidding Process”).

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Motion, the Bid Procedures, and the Bid Procedures Order, as applicable.

³ A copy of the Stalking Horse APA is attached to the Bid Procedures Order as Exhibit 2.

The key dates for the sale process are as follows. The Debtors, after consultation with the Consultation Parties, may extend any of the deadlines in these Bid Procedures.

| <i>ZOKINVY SALE TRANSACTION MILESTONES</i> | |
|---|--|
| EVENT OR DEADLINE | DATE AND TIME (ALL IN PREVAILING CENTRAL TIME) |
| Petition Date | P = 0 (April 1, 2024) |
| Bid Procedures Objection Deadline | Objections to the Bid Procedures may be made at the Bid Procedures Hearing |
| Bid Procedures Hearing | P + 3 (April 3, 2024) at 1:30 p.m. |
| Service and Publication of Sale Notice | 1 business day after entry of the Bid Procedures Order or as soon as reasonably practicable thereafter |
| Initial Zokinvy Cure Notice Deadline | P + 12 (April 12, 2024) at 4:00 p.m. |
| Zokinvy Bid Deadline ⁴ | P + 15 (April 15, 2024) at 4:00 p.m. |
| Zokinvy Sale Objection Deadline | P + 16 (April 16, 2024) at 4:00 p.m. |
| Zokinvy Cure Objection Deadline | P + 16 (April 16, 2024) at 4:00 p.m. |
| Determination of Zokinvy Qualified Bids | As soon as reasonably practicable following the Bid Deadline |
| Zokinvy Auction (if necessary) | P + 17 (April 17, 2024) at 9:00 a.m. |
| Deadline to File Notice of Zokinvy Winning Bid | As soon as reasonably practicable following the Auction |
| Post-Zokinvy Auction Objection Deadline | P + 20 (April 20, 2024) at 4:00 p.m. |
| Zokinvy Sale Hearing | P + 23 (April 23, 2024) at 9:30 a.m. |
| Anticipated Zokinvy Closing Date | P + 24 (April 24, 2024) |

| <i>REMAINING ASSETS SALE TRANSACTION(S) MILESTONES</i> | |
|---|--|
| EVENT OR DEADLINE | DATE AND TIME (ALL IN PREVAILING CENTRAL TIME) |
| Petition Date | P = 0 (April 1, 2024) |
| Bid Procedures Objection Deadline | Objections to the Bid Procedures may be made at the Bid Procedures Hearing |
| Bid Procedures Hearing | P + 3 (April 3, 2024) at 1:30 p.m. (prevailing Central Time) |
| Service and Publication of Sale Notice | 1 business day after entry of the Bid Procedures Order or as soon as reasonably practicable thereafter |
| Remaining Sale Transaction(s) Cure Notice Deadline | P + 65 (June 4, 2024) at 4:00 pm |

⁴ The Debtors reserve their right, in their own discretion, to move the deadline for the submission of qualified bids.

| REMAINING ASSETS SALE TRANSACTION(S) MILESTONES | |
|--|--|
| EVENT OR DEADLINE | DATE AND TIME (ALL IN PREVAILING CENTRAL TIME) |
| Remaining Sale Transaction(s) Bid Deadline ⁵ | P + 71 (June 10, 2024) at 4:00 pm |
| Remaining Sale Transaction(s) Objection Deadline | P + 73 (June 12, 2024) at 4:00 pm |
| Remaining Sale Transaction(s) Cure Objection Deadline | P + 73 (June 12, 2024) at 4:00 pm |
| Determination of Remaining Sale Transaction(s) Qualified Bids | As soon as reasonably practicable following the Bid Deadline |
| Remaining Sale Transaction(s) Auction (if necessary) | P + 75 (June 14, 2024) at 9:00 am |
| Deadline to File Notice of Remaining Sale Transaction(s) Winning Bid | As soon as reasonably practicable following the Auction |
| Post-Remaining Sale Transaction(s) Auction Objection Deadline | P + 79 (June 18, 2024) at 4:00 pm |
| Remaining Sale Transaction(s) Hearing | P + 81 (June 20, 2024) (subject to the Court's availability) |
| Anticipated Remaining Sale Transaction(s) Closing Date | P + 92 (July 1, 2024) |

II. SUBMISSIONS TO THE DEBTORS; CONSULTATION PARTIES

All submissions to the Debtors required or permitted to be made under these Bid Procedures must be directed to each of the following persons or entities unless otherwise provided (collectively, the “Notice Parties”):

- A. Debtors: Eiger BioPharmaceuticals, Inc., EBPI Merger Inc., EB Pharma LLC, Eiger BioPharmaceuticals Europe Limited, and EigerBio Europe Limited (“Eiger”) (attn: David Apelian (dapelian@eigerbio.com)).
- B. Debtors’ Proposed Counsel: Sidley Austin LLP (“Sidley”) (attn: Thomas R. Califano (tom.califano@sidley.com), William E. Curtin (wcurtin@sidley.com), Anne G. Wallice (anne.wallice@sidley.com)); and
- C. Debtors’ Proposed Investment Banker: SSG Advisors, LLC (“SSG”) (attn: J. Scott Victor (jsvictor@ssgca.com); Teresa C. Kohl (tkohl@ssgca.com)).

The “Consultation Parties” as used in these Bid Procedures are: (a) Innovatus Life Sciences Lending Fund I, LP (“Innovatus”), in its capacity as Debtors’ Prepetition Term Loan Lender and its counsel, so long as Innovatus does not become a bidder in the sale process, ~~and~~

⁵ The Debtors reserve their right, in their own discretion, to move the deadline for the submission of qualified bids.

(B) advisors to the Official Committee of Unsecured Creditors, if any (the “Committee Advisors”), and (C) with respect to the Zokinvy Assets, The Progeria Research Foundation, Inc. (“PRF”).

If a Consultation Party, in its capacity as such, receives material information in connection with Bids or bidders in a Sale Transaction process, which information is not provided to all Potential Bidders in such Sale Transaction process, such party shall be prohibited from being deemed a Qualified Bidder in connection with such Sale Transaction process, unless such information is provided to all other Potential Bidders in such Sale Transaction process by the applicable bid deadline or promptly following receipt of such information by such party. For the avoidance of doubt, the Consultation Parties shall only be allowed to engage with bidders or discuss material information in connection with Bids directly through or with SSG.

In the event that any Consultation Party or an affiliate of the foregoing submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party or its affiliates established under these Bid Procedures will be waived, discharged, and released without further action; provided that the bidding party will have the same rights as any other Qualified Bidder set forth above.

III. MARKETING PROCESS

To facilitate a value-maximizing exit from these chapter 11 cases, the Debtors are conducting a marketing process for the sale or disposition of all or any portion of the Assets under section 363 of the Bankruptcy Code (the “Sale”). The Debtors retained SSG, a leading international investment banking and financial advisory firm, in March 2024 to serve as its proposed investment banker.

SSG will engage with additional potential bidders, and will continue to do so until a Sale Transaction(s) is approved by this Court. The Debtors may distribute (if not already distributed) to a person or entity (other than the Zokinvy Stalking Horse Purchaser) interested in purchasing any or all of the Assets (a “Potential Bidder”) an “Information Package” consisting of:

- a. a copy of the Bid Procedures, the Bid Procedures Order, and the Bid Procedures Motion;
- b. a form of non-disclosure agreement (“NDA”), substantially in the form attached as Schedule 1, and acceptable to the Debtors; and
- c. any other materials appropriate under the circumstances.

IV. OVERVIEW

The Debtors seek to sell substantially all of the Debtors' Assets through the consummation of various sale transaction processes. Except as otherwise provided in any Winning Bidder's purchase agreement, all of the Debtors' right, title, and interest in and to the Assets shall be sold free and clear of all liens, claims, encumbrances and interests (collectively, the "Encumbrances") to the maximum extent permitted by section 363 of the Bankruptcy Code (other than Permitted Liens and Assumed Liabilities), with these Encumbrances to attach to the proceeds of the Sale with the same validity and priority as such Encumbrances applied against the Assets.

V. POTENTIAL BIDDER REQUIREMENTS

To receive due diligence information, including full access to the Debtors' electronic data room and to additional non-public information regarding the Debtors, or otherwise participate in the bidding process or be considered for any purpose under the Bid Procedures, a Potential Bidder must deliver the following documents (collectively, the "Preliminary Bid Documents") by email to the Notice Parties (unless the Debtors, in their business judgment and in consultation with the Consultation Parties, choose to waive any of the following requirements for any Potential Bidder):

- a. an executed NDA on terms acceptable to the Debtors;
- b. identity of the Potential Bidder, including its legal name, jurisdiction and form of organization, and details regarding the ownership and capital structure of the Potential Bidder, including details related to the Potential Bidder's beneficial owners, ultimate beneficial owners, and controlling entities, and any of the principals, corporate officers, or other representatives that are authorized to appear for and act on behalf of the Potential Bidder with respect to the contemplated transaction; and description of the nature and extent of any due diligence the Potential Bidder wishes to conduct; and
- c. a description of the due diligence the Potential Bidder seeks to conduct;
- d. sufficient information, as reasonably determined by the Debtors, in consultation with the Consultation Parties, that the Potential Bidder (i) has or may reasonably obtain the financial capacity to close the Sale (including current audited or verified financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach) as well as an overview of any recent transactions), the adequacy of which must be acceptable to the Debtors; and
- e. sufficient information, as reasonably determined by the Debtors, that the Potential Bidder has the ability to receive any and all necessary governmental, licensing, regulatory, and other approvals.

Promptly after a Potential Bidder delivers Preliminary Bid Documents, the Debtors shall (i) determine and notify each Potential Bidder as to whether such Potential Bidder has submitted acceptable Preliminary Bid Documents, (ii) provide copies of any such notices to the Notice Parties and the Zokinvy Stalking Horse Purchaser, and (iii) provide copies of any such Preliminary Bid Documents to the Consultation Parties. Only those Potential Bidders that have submitted acceptable preliminary documentation (each, an “Acceptable Bidder”) to the reasonable satisfaction of the Debtors and their advisors, in consultation with the Consultation Parties, may submit bids to purchase the Assets.

VI. DUE DILIGENCE

The Debtors will provide instructions to Acceptable Bidders for accessing the virtual data room established by SSG in connection with the Sale Transaction(s) process (the “Data Room”). The Debtors will address all reasonable requests for additional information and due diligence access. The Debtors may refuse any party access to due diligence information, including access to the Data Room, in whole or in part and at any time, if the Debtors determine in their reasonable business judgment after consultation with counsel that (i) access by such party may be harmful to the Debtors or their estates or (ii) such party has not established that it intends or has the capacity to consummate a Sale Transaction for the Assets in good faith.

The due diligence period and the Data Room shall be open until the Bid Deadline(s) (as defined below). After the Bid Deadline(s), the Debtors shall have no obligation to furnish due diligence information. The Debtors may, in the exercise of their reasonable business judgment and in consultation with their counsel and the Consultation Parties, extend a party’s time to conduct due diligence.

The Debtors make no representation or warranty as to the information provided through this due diligence process or otherwise, including the documents in the Data Room, except as set forth in any executed definitive documents for the Sale.

Each Acceptable Bidder and Bidder (as defined below) shall comply with all reasonable requests with respect to information and due diligence access by the Debtors or their advisors regarding such Acceptable Bidder(s) or Bidder, as applicable, and its contemplated Sale Transaction(s).

II. NO COMMUNICATIONS AMONG BIDDERS

There shall be no communications regarding potential Bids, a potential Sale Transaction, or another potential transaction between or among any bidders, including the Stalking Horse Purchaser(s), and the Consultation Parties, unless the Debtors have previously authorized such communication in writing (such authorization, for the avoidance of doubt, email from the Debtors’ counsel being sufficient). The Debtors reserve the right, in their reasonable business judgment, to disqualify any bidder that the Debtors believe in their reasonable judgment has communicated with another bidder or the Consultation Parties in violation of these Bid Procedures.

For the avoidance of doubt, the joining of Bids between Potential Bidders or Acceptable Bidders is permitted; *provided* that, if any Potential Bidders or Acceptable Bidders are interested

in joining Bids, the Debtors' advisors will facilitate the communications between such parties and the potential joining of Bids.

VII. INDICATIONS OF INTEREST

The Debtors reserve the right to require Acceptable Bidders to submit written indications of interest prior to the Bid Deadline specifying, among other things, the Assets proposed to be acquired, the amount and type of consideration to be offered, and any other material terms to be included in a bid by such party; *provided* that the Consultation Parties shall have the right to review any indications of interest received by the Debtors. If an Acceptable Bidder fails to comply with any such request by the Debtors, the Debtors may deny such Acceptable Bidder further diligence access or deny such Acceptable Bidder further participation in the Auction process. The Debtors also reserve the right to exclude any Acceptable Bidder (prior to its submission of a Qualified Bid) from continuing in the Auction process if the Debtors determine that the consideration proposed to be paid by such Acceptable Bidder is insufficient.

VIII. BID DEADLINES

Bids (including all requirements to be considered a Qualified Bid (defined below)), as they relate to the Zokinvy Sale Transaction, must be submitted in writing to the Notice Parties so as to be actually received by no later than April 15, 2024 at 4:00 pm (prevailing Central Time) (the "Zokinvy Bid Deadline").

Bids (including all requirements to be considered a Qualified Bid), as they relate to the Remaining Sale Transaction(s), must be submitted in writing to the Notice Parties so as to be actually received by not later than June 10, 2024 at 4:00 pm (prevailing Central Time) (the "Remaining Sale Transaction(s) Bid Deadline").

IX. QUALIFIED BID REQUIREMENTS

Only bids ("Bids") and bidders that satisfy the following conditions will be considered or permitted to participate in the bidding, Auction(s), or Sale(s) (each, a "Qualified Bid") and the bidder(s) submitting a Qualified Bid, a "Qualified Bidder"):

- a. **Timeliness.** The Bid must be in writing and timely and properly submitted in accordance with the Bid submission process set forth below, including successful and timely delivery of the Good Faith Deposit (defined below).
- b. **Identity of Bidder.** The Bid must fully disclose the identity of each person or entity that is participating in the Bid (and the complete terms of such participation) and each such person or entity shall have delivered an executed NDA to the Debtors in accordance with the instructions set forth above. "Participation" in a Bid includes persons or entities that are equity holders in an entity specially formed for the purpose of effectuating a Sale Transaction for the Assets.
- c. **Proposed Transaction Perimeter and Purchase Price.** The Bid must propose a Sale Transaction for substantially all of the Debtors' Assets or identify with the

precision customary for a sale of this type the Assets included in such Bid and identify (a) the cash consideration to be paid (or the amount of any credit bid as allowed herein) for the Assets included in the Bid and (b) any liabilities to be assumed as part of the proposed acquisition, including a reasonable estimate of the cash value thereof (clauses (a) and (b) together, the “Proposed Purchase Price”).

- d. **Proposed APA.** The Bid must state that the bidder is prepared to consummate the transaction promptly following entry of an order approving the Sale and be accompanied by (a) a purchase and sale agreement executed by the bidder (the “Proposed APA”), a form of which will be available in the Data Room (the “Form APA”), (b) a redline of the Proposed APA against the Form APA, and (c) evidence of authorization and approval from the board (or comparable governing body) of each person or entity participating in the Bid with respect to the submission, execution, delivery, and performance of the Bid and Proposed APA.
- e. **Lack of Contingencies; Binding Bid.** The Bid must be (a) unqualified and not subject to any contingencies or conditions (including any further due diligence, material financing conditions, and internal approval (such as but not limited to board approval)), other than the contingencies or conditions in the Form APA, and (b) include a written commitment by the applicable Potential Bidder to serve as Back-Up Bidder in the event that such Bid is not selected as the Winning Bid and will be binding and irrevocable until (i) if such bid is the Winning Bid or a Backup Bid, the earlier of (x) the closing of the Sale or (y) 45 days after the conclusion of the Auction (or, if no Auction is held, 45 days after the date on which the Debtors file a notice of cancellation of Auction) or (ii) two (2) business days after entry of an order approving the Winning Bid and (if applicable) the Backup Bid for the applicable Assets (such order, a “Sale Order”).
- f. **Regulatory and Third-Party Approvals.** The Bid must set forth each regulatory and third-party approval required for the bidder to consummate the proposed Sale Transaction(s), if any, and the date by which the bidder expects to receive such approvals, and those actions the bidder will take to ensure receipt of such approvals as promptly as possible.
- g. **Adequate Assurance Information.** The Bid must include financial and other information sufficient for the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the bidder’s financial and other capabilities to consummate the transactions contemplated by the Proposed APA by no later than April 24, 2024 for Zokinvy Assets and July 1, 2024 for the Remaining Assets, including (a) the availability of funds to satisfy the Proposed Purchase Price and (b) information constituting adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of the Bankruptcy Code (if any), [including for the avoidance of doubt, that certain](#)

[Amended and Restated Collaboration and Supply Agreement, dated as of February 29, 2024 by and between Eiger BioPharmaceuticals, Inc. and PRF \(the "Collaboration and Supply Agreement"\)](#) ("Adequate Assurance Information"), which information the Debtors may request be supplemented or altered such that it can be served on counterparties to any contracts or leases to be assumed and assigned in connection with the Sale that request such information. Provision of the Adequate Assurance Information to the Debtors shall, and shall be deemed to, constitute consent by the bidder for the Debtors to share such Adequate Assurance Information with the counterparties under Potential Assumed Contracts and Designated Contracts on a confidential basis; provided that the Debtors shall not be required to enter into any nondisclosure or similar agreement with such counterparties to provide the Adequate Assurance Information and shall not be liable for such counterparties' failure to abide by the confidentiality of the Adequate Assurance Information.

- h. **Identification of Assigned Contracts.** The Bid must identify any and all executory contracts and unexpired leases to which the Debtors are a party that the bidder wishes to have assumed and assigned to it in connection with the Sale (if any). The bidder shall be solely responsible for the payment of any cure costs required pursuant to section 365 of the Bankruptcy Code.
- i. **Management and Employee Obligations.** Each Bid must indicate whether the bidder intends to hire all or some of the employees who are primarily employed in connection with the Assets to be included in the proposed Sale Transaction.
- j. **As-is, Where-is.** Each Bid must include a written acknowledgement and representation that the bidder: (1) has had an opportunity to conduct any and all due diligence regarding the proposed Sale Transaction(s) prior to making its offer; (2) has relied solely upon its own independent review, investigation, or inspection of any documents in making its Bid; (3) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or their advisors or other representatives regarding the Sale Transaction or the completeness of any information provided in connection therewith or the Auction (if any); and (4) did not engage in any collusive conduct and acted in good faith in submitting its Bid.
- k. **Expected Closing Date.** Each Bid must state the Acceptable Bidder's expected date of closing the applicable Sale.
- l. **Lack of Bid Protections.** Unless consented to in writing by the Debtors and approved by the Court (and excluding the Stalking Horse Bid), the Bid must not request or entitle the bidder to any break-up fee, topping fee, expense reimbursement, or similar type of payment (and by submitting a bid, a bidder shall be deemed to have waived its right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code in any way related to the

submission of its bid or these Bid Procedures) or indemnification by the Debtors in favor of the bidder.

- m. **Bidder's Contact Information.** The Bid must include contact information for the specific person(s) the Debtors should contact in the event they have questions regarding the bid.

By submitting a Bid, a bidder is deemed to acknowledge (and shall represent in any definitive document) that (i) it has had an opportunity to inspect and examine the Assets and to conduct any and all due diligence prior to submitting its bid, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of the Assets and any documents in submitting its bid, (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied by operation of law or otherwise, regarding the Debtors' business, the Assets, or the completeness of any information provided in connection with the Bid Procedures or the Sale process.

By submitting a Bid, each bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bid Procedures and to refrain from (A) submitting a Bid after conclusion of the Auction (if any) or (B) seeking to reopen the Auction (if any) once closed. **The submission of a Bid shall constitute a binding and irrevocable offer (a) for the Winning Bidder(s), until consummation of the Sale Transaction(s), (b) for the Backup Bidder (if any), as provided in these Bid Procedures, as provided herein, and (c) for any Bidder other than the Winning Bidder(s) and Backup Bidder, until two (2) business days after entry of an order approving the Winning Bid and (if applicable) the Backup Bid for the applicable Assets (such order, a "Sale Order"), and each Bid must include a written acknowledgement and representation to such effect.**

As soon as reasonably practicable following the Bid Deadline, the Debtors, in consultation with the Consultation Parties, shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; provided that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction. The Stalking Horse Purchaser(s) shall be deemed to be a Qualified Bidder, the Stalking Horse Bid(s) shall be deemed a Qualified Bid, and the Stalking Horse Purchaser(s) may participate in the Auction with respect to the Assets.

The Debtors and their advisors shall maintain in confidence in accordance with the applicable executed NDA any information provided by a bidder that is designated as confidential, except as otherwise set forth in these Bid Procedures, and shall use such confidential information only in connection with the evaluation of Bids or otherwise in connection with the chapter 11 case or in accordance with the executed NDA. Notwithstanding the foregoing and any provisions in an executed NDA, the Debtors and Debtors' advisors may disclose confidential information (i) with the prior written consent of the applicable bidder, (ii) to the applicable bidder, and (iii) as otherwise required or allowed by any applicable confidentiality agreement with respect to a

particular bidder or other agreement, law, court, or other governmental order, or regulation, including, as appropriate, regulatory agencies.

X. BID SUBMISSION AND EVALUATION PROCESS; GOOD FAITH DEPOSITS

Concurrent with the submission of its Bid, and in no event later than the Bid Deadline, a bidder must deposit with the Debtors in cash 5% of the bidder's Proposed Purchase Price (the "Good Faith Deposit"), which shall be refundable as described below. Bank information for the Debtors will be included in the Data Room. The Debtors, in their business judgment, after consultation with the Consultation Parties, may elect to waive or modify the requirement of a Good Faith Deposit on a case-by-case basis.

Each bidder shall comply with all reasonable requests by the Debtors for additional information and due diligence access regarding the ability of a bidder to consummate the Sale. A bidder's failure to comply with such requests may be a basis for the Debtors to determine such bidder is not a Qualified Bidder and the associated Bid is not a Qualified Bid.

Notwithstanding anything herein to the contrary, the Debtors, in consultation with the Consultation Parties, reserve the right to work with (A) Potential Bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the applicable Bid Deadline and (B) Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the Auction (if any). The Debtors reserve the right to cooperate with any Acceptable Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder and their Bid a single Qualified Bid for purposes of the Auction (if any)).

The Debtors shall determine, in their reasonable business judgment, in consultation with the Consultation Parties, (i) which Bids meet the criteria to qualify as a Qualified Bid and (ii) if there is more than one Qualified Bid, which Qualified Bid will serve as the baseline Bid at the commencement of the Auction to facilitate obtaining the highest and best value for the Debtors' estates. Any Bid that does not meet the criteria for a Qualified Bid set forth above shall be rejected as a non-conforming bid.

The Debtors shall determine, in their reasonable judgment after consultation with the Debtors' financial and legal advisors, and the Committee, if any, and with the Administrative Agent's consent, so long as no prepetition secured party has submitted a Qualified Bid and with such consent not to be unreasonably withheld, which of the Qualified Bids is likely to result in the highest and best value to the Debtors' estates (the "Initial Highest Bid").

Not later than 24 hours before the commencement of the Auction, to the extent feasible, the Debtors will provide to those participating in the Auction (the "Auction Participants") and the Consultation Parties a copy of the Initial Highest Bid. To allow the Auction Participants to evaluate the Initial Highest Bid, the Debtors shall use commercially reasonable efforts to disclose the value that, in their business judgment, and with the Administrative Agent's consent, so long

as no prepetition secured party has submitted a Qualified Bid and with such consent not to be unreasonably withheld, and in consultation with the Committee, if any, they place on the Initial Highest Bid. The Debtors shall also use commercially reasonable efforts to disclose to each Auction Participant the value that, in their business judgment, they place on such Auction Participant's Qualifying Bid.

XI. STALKING HORSE AND BID PROTECTIONS

Notwithstanding anything herein to the contrary, the Zokinvy Stalking Horse Purchaser shall not be required to submit an additional Qualified Bid prior to an Auction. To provide the Zokinvy Stalking Horse Purchaser with an incentive to participate in a competitive process and to compensate the Zokinvy Stalking Horse Purchaser for (i) performing substantial due diligence and incurring the expenses related thereto and (ii) entering in the Zokinvy Stalking Horse APA with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors have agreed to, pursuant to the terms of the Bid Procedures Order and the Zokinvy Stalking Horse APA, bid protections in the aggregate of three percent (3.0%) of the Base Price (the "Zokinvy Bid Protections").

Should the Debtors designate a Stalking Horse Purchaser for the Remaining Assets, the Bid Protections of the Stalking Horse Bid shall not exceed a maximum of 5 percent (the "Remaining Assets Bid Protections").

XII. NO QUALIFIED BIDS

If no Qualified Bids other than the Zokinvy Stalking Horse Bid are received by the Bid Deadline(s), then the Debtors shall cancel the Auction(s) and designate the Zokinvy Stalking Horse Bid as the Winning Bid as to the Zokinvy Assets, pursue entry of a Sale Order approving the Sale of the Zokinvy Assets to the Zokinvy Stalking Horse, and pursue alternative transaction(s) for the disposition of the Remaining Assets. If the Debtors make such a determination, the Debtors shall file a notice with the Bankruptcy Court within one (1) business day of making such determination.

XIII. AUCTION

If the Debtors receive two or more Qualified Bids with respect to the same Assets by the applicable Bid Deadline(s), the Debtors may, after consultation with the Consultation Parties, conduct an Auction to determine the Winning Bidder(s) (or Back-Up Bidder, as applicable) with respect to such Assets. In such event, the Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' business judgment, the highest or otherwise best Qualified Bid or combination of Qualified Bids for particular Assets (the "Starting Bid"). When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate and/or relevant to the value of the Qualified Bid to the Debtors' estates: (a) the amount and nature of the total consideration; (b) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; and (d) the tax consequences of such Qualified Bid. Prior to the start of the Auction,

the Debtors shall notify the Stalking Horse Purchaser(s) and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Purchaser(s) and each Qualified Bidder.

If an Auction is held for the Zokinvy Assets, such Auction shall take place on April 17, 2024, at 9:00 a.m. (prevailing Central Time), via remote video or in person at the Debtors' election and shall be conducted in a timely fashion according to the procedures set forth below (the "Auction Procedures").

If an Auction is held for the Remaining Assets, such Auction shall take place on June 14, 2024, at 9:00 a.m. (prevailing Central Time), via remote video or in person at the Debtors' election and shall be conducted in a timely fashion according to the Auction Procedures.

The Auction(s) will be subject to the following rules:

- a. **Attendance and Participation.** Only Qualified Bidders may participate in or make subsequent Bids at the Auction. Only the Debtors, Qualified Bidders, Consultation Parties, the United States Trustee, and such parties' representatives and advisors may attend the Auction; *provided* that Qualified Bidders may appear through a duly authorized representative bearing a valid and enforceable power of attorney or other written proof evidencing their ability to bind the applicable Qualified Bidder, which document(s) shall be delivered to the Debtors prior to the commencement of the Auction.
- b. **Confirmation of Good Faith.** Each Qualified Bidder will be required to confirm on the record at the Auction that (a) it has not engaged in any collusion with respect to the bidding or Sale and (b) its Qualified Bid and any subsequent Bid, is a good-faith bona fide offer and it intends to consummate the proposed sale if selected as a Winning Bidder.
- c. **Transcript.** The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Winning Bid (and Backup Bid, as applicable).
- d. **Terms of Overbids.**
 - a. **Minimum Overbid Requirement.** Only incremental Bids that comply with the Bid Procedures shall be considered "Overbids." At the commencement of the initial solicitation of Overbids, the Debtors shall announce the minimum increment by which any Overbid must exceed the applicable Starting Bid. The minimum overbid increment for the second bid for the Zokinvy Assets is \$375,000, and the minimum overbid increment for the second bid for the Remaining Assets shall be announced by the Debtors prior to or at the commencement of the Auction of the Remaining Assets. At the commencement of each subsequent round of solicitation of Overbids, the Debtors shall announce the minimum increment by which any Overbid must exceed the Prevailing Highest Bid

(as defined below) at such time. The Debtors may, in their reasonable business judgment announce increases or reductions to the applicable minimum Overbid increment at any time during the Auction.

- b. **Conclusion of Each Overbid Round.** Upon the solicitation of each round of Overbids, the Debtors may announce a deadline by which time any Overbids must be submitted to the Debtors (an “Overbid Round Deadline”); provided that the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, may extend any Overbid Round Deadline.
- c. **Overbid Alterations.** An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable in the aggregate to the Debtors’ estates than any prior Qualified Bid or Overbid, as determined in the Debtors’ business judgment, in consultation with the Consultation Parties, but shall otherwise comply with the terms of the Bid Procedures. For the avoidance of doubt, the Zokinvy Stalking Horse Purchaser shall not be required to include an amount in cash necessary to satisfy the Zokinvy Bid Protections as part of any Overbid.
- d. **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors, with the Administrative Agent’s consent, so long as no prepetition secured party has submitted a Qualified Bid and with such consent not to be unreasonably withheld, have identified an Overbid as being higher or otherwise better than the Starting Bid, in the initial Overbid round, or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all applicable Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid.
- e. **Consideration of Overbids.** The Debtors reserve the right, in their business judgment, in consultation with the Consultation Parties, to adjourn the Auction one or more times, to, among other things (1) facilitate discussions between the Debtors and Qualified Bidders, (2) allow Qualified Bidders the opportunity to consider how they wish to proceed, and (3) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent financing commitments to consummate the proposed Sale Transaction(s) at the prevailing Overbid amount.
- f. **No Round-Skipping.** To remain eligible to participate in the Auction, in each round of bidding, each Qualified Bidder must submit an Overbid with respect to such round of bidding and to the extent a Qualified Bidder fails to submit an Overbid with respect to such round of bidding, such Qualified Bidder shall be

disqualified from continuing to participate in the Auction; provided that the Debtors may waive such requirement in their business judgment.

- g. **Reimbursable Expenses for the Stalking Horse Purchaser(s).** For the Auction, the Debtors will take into account the Bid Protections in each round of bidding. The Bid Protections shall be payable as set forth in the Bid Procedures Order.
- h. **Closing the Auction(s).** The Auction(s) shall continue until there is only one Qualified Bid that the Debtors determine, in their business judgment and in consultation with their advisors and the Committee, if any, and with the consent of the Administrative Agent, so long as no prepetition secured party has submitted a Qualified Bid and with such consent not to be unreasonably withheld, to be the highest or otherwise best Qualified Bid for the applicable Assets. Such Qualified Bid shall be designated the “Winning Bid” for such Assets and the Qualified Bidder submitting such Qualified Bid shall be designated the “Winning Bidder,” at which time the Auction with respect to such Assets shall be closed. The Debtors, in consultation with their advisors and the Consultation Parties, may also designate a bid that is the next highest or otherwise best after the Winning Bid (the “Backup Bid”) and the Qualified Bidder submitting the Backup Bid shall be the backup bidder (the “Backup Bidder”). In no case shall such Auction(s) close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. The Debtors’ designation of a Qualified Bid as a Winning Bid (or Backup Bid, as applicable) shall be subject to and conditioned on the Bankruptcy Court’s approval of such Winning Bid (or Backup Bid, as applicable) and the Sale Transaction(s) contemplated thereby. As soon as reasonably practicable after the designation of a Winning Bid (or Backup Bid, as applicable), the Debtors shall finalize definitive documentation to implement the terms of such Winning Bid (or Backup Bid, as applicable) and cause such definitive documentation to be filed with the Bankruptcy Court.
- i. **Credit Bidding.** Any party that has a valid and perfected lien on any of the Assets (a “Secured Creditor”) shall have the right to credit bid all or any portion of the Secured Creditor’s claim on a dollar-for-dollar basis pursuant to section 363(k) of the Bankruptcy Code; provided that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured and only to the extent such credit bid is permitted under any relevant agreements and the Bankruptcy Code; provided further, however, that any credit bid must include a cash component equal to or exceeding the amount of the Bid Protections. Subject to Section II of these Bid Procedures, any Secured Creditor shall be deemed to be a Qualified Bidder, shall be deemed to have submitted a Qualified Bid, and may participate in the Auction with respect to the assets, provided that no other party other than the Administrative Agent may credit bid on the Collateral (as defined in the Cash Collateral Order) unless the entire amount of the allowed prepetition term loan secured indebtedness will be paid in full in cash on the closing of such credit bid transaction.

- j. **Rejection of Bids.** The Debtors in their reasonable business judgment, in consultation with the Consultation Parties, may reject, at any time before entry of an order of the Bankruptcy Court approving a Successful Bid (or Back-Up Bid, as applicable), any Bid that the Debtors determine is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bankruptcy Code and/or the Bid Procedures, or (3) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders.
- k. **Adjustment of Deposit.** The Winning Bidder(s) and Backup Bidder(s) shall have one (1) business day from the announcement of the Winning Bid and Backup Bid to deposit with the Debtors in cash an amount sufficient to increase such bidder's Good Faith Deposit to 5% of the Proposed Purchase Price provided for in the Winning Bid or Backup Bid, as applicable.
- l. **Announcement of Winning Bid and Backup Bid.** As soon as reasonably practicable after conclusion of the Auction(s), the Debtors shall file with the Court a notice of the results of the Auction(s) (the "Notice of Winning Bid"), which shall include (i) a copy of the Winning Bid and Backup Bid, (ii) the identities of the Winning Bidder(s) and Backup Bidder(s), and (iii) a list of all executory contracts and unexpired leases proposed to be assumed and assigned as part of the Sale (if any) and the cure cost pursuant to section 365(b) associated with each.

The Debtors, in consultation with the Consultation Parties, may adopt such other rules for the Auction(s) (including procedural rules and rules that may depart from those set forth herein) that they reasonably determine will result in the highest or otherwise best value for the Debtors' estates and that are not inconsistent with any Court order; *provided* that any changed or additional rules of the Auction(s) are not materially inconsistent with these Bid Procedures, do not favor one Qualified Bidder over another, and are communicated to all participants substantially simultaneously at or prior to the Auction(s).

XIV. SALE

A hearing to approve the Sale of the Assets to the Winning Bidder(s) in accordance with the terms of the Winning Bid(s) and pursuant to the Proposed APA associated therewith as it relates to the Zokinvy Sale Transaction (the "Zokinvy Sale Hearing") will take place on April 23, 2024 at 9:30 a.m. (prevailing Central time).

A hearing(s) to approve the Sale(s) of the Assets to the Winning Bidder(s) in accordance with the terms of the Winning Bid(s) and pursuant to the Proposed APA associated therewith as it relates to the Remaining Sale Transaction(s) (the "Remaining Sale Transaction(s) Hearing") will take place on June 20, 2024 at 2:30 p.m. (prevailing Central time).

- a. If, for any reason, a Winning Bidder(s) fails to timely consummate the purchase of the Assets, the Debtors, in consultation with the Committee, if any, and with the Administrative Agent's consent, not to be unreasonably withheld, may seek to consummate a Sale to the Backup Bidder(s) in accordance with the terms of the Backup Bid(s) and pursuant to the Proposed APA(s) associated therewith without

further approval by the Court (in which case the Backup Bidder shall be deemed the Winning Bidder).

- b. If a Winning Bidder fails to timely consummate the purchase of the Assets due to a breach or failure to perform on the part of the Winning Bidder, the defaulting Winning Bidder's Good Faith Deposit shall be forfeited to the Debtors and the Debtors specifically reserve the right to seek all available damages from the defaulting Winning Bidder.
- c. The Backup Bid(s) and the obligation of the Backup Bidder(s) to consummate the purchase of the Assets shall remain open and in full force, including with respect to the Backup Bidder's Good Faith Deposit, until the earlier of (a) the closing of a Sale of the Assets to a Winning Bidder or Backup Bidder or (b) 45 days after the conclusion of the Auction (or, if no Auction is held, 45 days after the date on which the Debtors file a notice of cancellation of Auction).
- d. The Winning Bidder(s) and Backup Bidder(s) shall appear at the Sale Hearing(s) personally or through a duly authorized representative who shall be prepared to testify in support of the Winning Bid(s) and the Winning Bidder's, or Backup Bid(s) and Backup Bidder's, ability to close the Sale in a timely manner and provide adequate assurance of future performance under any and all executory contracts and unexpired leases to be assumed and assigned as part of the Sale.

Any objections to the proposed Zokinvy Sale Transaction, including objections to the Winning Bidder's or Backup Bidder's adequate assurance of future performance and the proposed assumption and assignment of any executory contract or unexpired lease (including any proposed cure cost), must be filed with the Court no later than April 16, 2024 at 4:00 pm (prevailing Central time).

Any objections to the proposed Remaining Sale Transaction(s), including objections to the Winning Bidder's or Backup Bidder's adequate assurance of future performance and the proposed assumption and assignment of any executory contract or unexpired lease (including any proposed cure cost), must be filed with the Court no later than June 18, 2024 at 4:00 pm (prevailing Central time).

The Debtors and the Winning Bidder(s) shall consummate the Zokinvy Sale Transaction no later than April 24, 2024; and consummate the Remaining Sale Transaction(s) no later than July 1, 2024. At the closing of the Sale(s), the Winning Bidder(s) will be entitled to a credit for the amount of its Good Faith Deposit.

XV. RETURN OF GOOD FAITH DEPOSITS

The Good Faith Deposits shall be held in a non-interest-bearing account established and held by, and in the name of, the Debtors. The Good Faith Deposits are not property of the Debtors or their estates.

Within five (5) business days of determining a Bid does not qualify as a Qualified Bid, the Debtors shall return by check or wire the full amount of the Good Faith Deposit submitted in connection with such non-qualified Bid. Within five (5) business days of the conclusion of the Auction, the Debtors shall return by check or wire the full amount of each Good Faith Deposit submitted by a party that is not selected as the Winning Bidder(s) or Backup Bidder(s).

Unless a Sale is consummated with such bidder or the Good Faith Deposit is forfeited as provided above, the full amount of the Winning Bidder's or Backup Bidder's Good Faith Deposit, as applicable, shall be returned by check or wire within five business days of earlier of (i) the closing of the Sale or (ii) 45 days after the conclusion of the Auction (or, if no Auction is held, 45 days after the date on which the Debtors file a notice of cancellation of Auction).

All Good Faith Deposits shall be returned within five business days of the entry of an order dismissing or converting the chapter 11 case under section 1112 of the Bankruptcy Code if such dismissal or conversion occurs prior to the consummation of a Sale.

XVI. BID PROTECTIONS

No bidder, whether or not a Qualified Bidder, shall be entitled to bid protections, other than the Zokinvy Bid Protections or Remaining Assets Bid Protections, unless consented to in writing by the Debtors and approved by the Court. The Debtors reserve the right to seek, in consultation with their advisors and the Consultation Parties, approval of bid protections from the Court on emergency notice to the extent the Debtors determine, in their business judgment, that such bid protections are necessary or advisable under the circumstances to facilitate obtaining the highest and best value for the Debtors' estates.

XVII. RESERVATION OF RIGHTS

The Debtors reserve their rights to modify these Bid Procedures in their business judgment, subject to the consent of the Administrative Agent, not to be unreasonably withheld, and in consultation with the Committee, if any, in any manner that will best promote the goals of these Bid Procedures or impose additional customary terms and conditions on the Sale(s), including extending the deadlines set forth herein, adjourning the Auction(s) or the Sale Hearing(s), adding procedural rules that are reasonably necessary or advisable under the circumstances to conduct the Auction(s), cancelling the Auction(s), and rejecting any or all Bids or Qualified Bids.

XVIII. CONSENT TO JURISDICTION

All Qualified Bidders at the Auction(s) shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction(s) or the construction and enforcement of these Bid Procedures.

XIX. FIDUCIARY DUTIES

Notwithstanding anything to the contrary in the Bid Procedures or any document filed with or entered by the Bankruptcy Court, nothing in the Bid Procedures or the Bid Procedures Order shall require a Debtor or its board of directors, board of managers, or similar governing

body to take any action or to refrain from taking any action with respect to any Sale Transaction(s) or the Bid Procedures to the extent such Debtor or governing body determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Further, notwithstanding anything to the contrary in the Bid Procedures or any document filed with or entered by the Bankruptcy Court, until the closing of the Auction(s) (if any), the Debtors and their respective directors, managers, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (A) consider, respond to, and facilitate unsolicited alternate proposals for sales or other transactions involving any or all of the Assets (each, an "Alternate Proposal"); (B) provide access to non-public information concerning the Debtors to any entity or enter into reasonable and customary confidentiality agreements or nondisclosure agreements with any entity; (C) maintain or continue discussions or negotiations with respect to Alternate Proposals; (D) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiations of Alternate Proposals; and (E) enter into or continue discussions or negotiations with any person or entity regarding any Alternate Proposals.

Dated April 3~~1~~5, 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*

| Summary report: | |
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