

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

SIDLEY AUSTIN LLP
Charles M. Persons (24060413)
2021 McKinney Avenue, Suite 2000
Dallas, Texas 75201
Telephone: (214) 981-3300
Facsimile: (214) 981-3400
Email: cpersons@sidley.com

*Attorneys for the Debtors
and Debtors in Possession*

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

DEBTORS' AMENDED WITNESS AND EXHIBIT LIST

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), hereby submit this amended witness and exhibit list (the “Witness and Exhibit List”) and designate the following witnesses in connection with the matters scheduled for hearing on **June 26, 2024 at 1:30 p.m. (prevailing Central Time)**.

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 2100 Ross Avenue, Dallas, Texas 75201.



A. Witnesses

1. David Apelian, Chief Executive Officer of Eiger BioPharmaceuticals, Inc.
2. Craig Warznak, Senior Vice President of SSG Advisors, LLC
3. Doug Staut, Managing Director of Alvarez & Marsal and Chief Restructuring Officer of the Debtors
4. Any witnesses called or designated by any other party.
5. Any impeachment or rebuttal witnesses.

B. Exhibits

Ex. No.	Description	Judicial Notice	Marked	Offered	Objected	Admitted	Date	Disp. After Trial
1.	Bar Date Notice [Docket No. 309, Exhibit A-1]							
2.	Proof of Claim Form [Docket No. 309, Exhibit A-2]							
3.	Publication Notice [Docket No. 309, Exhibit A-3]							
4.	<i>Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings</i> [Docket No. 19]							
5.	<i>Declaration of J. Scott Victor in Support of Debtors' Motion for Entry of an 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 (B)</i>							

Ex. No.	Description	Judicial Notice	Marked	Offered	Objected	Admitted	Date	Disp. After Trial
	<i>Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief [Docket No. 24]</i>							
6.	<i>Declaration of David Apelian in Support of the Debtors' Motion for Entry of an 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 (B) Approving the Assumption and Assignment Of Designated Contracts; and (III) Granting Related Relief [Docket No. 27]</i>							
7.	<i>Revised Bid Procedures [Docket No. 119, Exhibit A]</i>							
8.	<i>Executed Avexitide Stalking Horse APA [Docket No. 350-1, Exhibit A]</i>							
9.	<i>Declaration of Craig D. Warznak in Support of the Debtors' Motion for the Sale of the Avexitide Assets and Motion for Entry of the Final Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; and (III) Modifying the Automatic Stay [Docket No. 361]</i>							
	All exhibits necessary for impeachment purposes							
	Any other document entered or filed in the above-styled bankruptcy case, including any exhibits thereto.							

Ex. No.	Description	Judicial Notice	Marked	Offered	Objected	Admitted	Date	Disp. After Trial
	Any and all documents identified or offered by any other party.							

[Remainder of the page intentionally left blank.]

Dated: June 25, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

Thomas R. Califano (TX Bar No. 24122825)
William E. Curtin (admitted *pro hac vice*)
Anne G. Wallace (admitted *pro hac vice*)
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

Attorneys for the Debtors and Debtors in Possession

Certificate of Service

I certify that on June 25, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Thomas R. Califano
Thomas R. Califano

Exhibit 1

Bar Date Notice

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

<p>In re:</p> <p>EIGER BIOPHARMACEUTICALS, INC., <i>et al.</i>¹</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 24-80040 (SGJ)</p> <p>(Jointly Administered)</p>
--	--

NOTICE OF (I) DATE BY WHICH PARTIES MUST FILE PROOFS OF CLAIM; AND (II) PROCEDURES FOR FILING PROOFS OF CLAIM AGAINST THE DEBTORS

The debtors and debtors in possession on the above-captioned chapter 11 cases (collectively, the “Debtors”) (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on April 1, 2024 (the “Petition Date”).

On June 2, 2024, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Setting Bar Dates for Filing Proofs of Claim; (II) Approving Form and Manner for Filing Proofs of Claim; (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests Notice of Bar Dates* [Docket No. [●]] (the “Bar Date Motion”) with the Court. On [●], the Court entered an order approving the Bar Date Motion [Docket No. [●]] (the “Bar Date Order”) and establishing certain dates (each, a “Bar Date,” and collectively, the “Bar Dates”) by which parties holding claims against the Debtors arising prior to the Petition Date must file proofs of claim. Each date is expressly set forth below.

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU MAY BE HOLDING A CLAIM AGAINST THE DEBTORS IN THE ABOVE-CAPTIONED CHAPTER 11 CASES. THEREFORE, YOU SHOULD READ THIS NOTICE CAREFULLY AND DISCUSS IT WITH YOUR ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.

Background to the Debtors’ Chapter 11 Cases

A. General Information About the Debtors’ Cases. The Debtors’ chapter 11 cases are being jointly administered under case number 24-80040 (SGJ) (Bankr. N.D. Tex.). No

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 2100 Ross Avenue, Dallas, Texas 75201.

request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

- B. Access to Proof of Claim Forms and Additional Information.** If you have any questions regarding the claims processing and/or if you wish to obtain a copy of the Bar Date Motion, Bar Date Order, proof of claim form, or related documents (and/or any other pleadings filed in these chapter 11 cases) you may do so by: (i) visiting the website of the Debtors' claims, noticing, and solicitation agent, Kurtzman Carson Consultants LLC ("KCC") at: <https://www.kccllc.net/Eiger>, (ii) (888) 733-1544 (Toll-Free) or (310) 751-2638 (International), and/or (iii) emailing <http://www.kccllc.net/Eiger/inquiry>. Please note that KCC **cannot** advise you on how to file, or whether you should file, a proof of claim.
- C. Schedules of Assets and Liabilities.** The Debtors filed their statement of financial affairs and schedules of assets and liabilities with the Court (collectively, the "Schedules") on May 6, 2024 [Docket No. 228]. The Schedules are available online and free of charge at <https://www.kccllc.net/Eiger> or for a fee via PACER at <https://ecf.txnb.uscourts.gov/>.

Bar Dates Approved by the Court

The Court has established the following Bar Dates as those dates by which parties holding claims against the Debtors arising prior to the Petition Date must file proofs of claims so that they are **actually received** by KCC:

General Bar Date: **July 22, 2024 at 4:00 p.m. (prevailing Central Time)** is the date by which all entities (which includes individual persons, estates, trusts, partnerships, and corporations, among others) must file proofs of claims.

Governmental Bar Date: **September 30, 2024 at 4:00 p.m. (prevailing Central Time)** is the date by which all governmental units holding claims (whether secured, unsecured priority, or unsecured non-priority) must file proofs of claim, including claims for unpaid taxes, if any, whether such claims arise from prepetition tax years or periods, or prepetition transactions to which the Debtors were a party.

Amended Schedules Bar Date: To the extent applicable, the later of (i) the General Bar Date or the Governmental Bar Date, as applicable, and (ii) twenty one (21) days from the date on which the Debtors mail notice of an amendment to the Schedules is the date by which holders of claims affected thereby must file proofs of claims.

Parties Required to File Claim Forms

- A. Definition of Claim.** Under section 101(5) of the Bankruptcy Code and as used herein, the word “claim” means: (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.
- B. Parties Who Must File Claim Forms.** The following entities holding claims against the Debtors arising prior to the Petition Date are required to file a proof of claim on or before the applicable Bar Date:
- a. any entity whose claim against a Debtor is not listed in the applicable Debtor’s Schedules or is listed as contingent, unliquidated, or disputed if such entity desires to participate in any of these chapter 11 cases or share in any distribution in any of these chapter 11 cases;
 - b. any entity who believes that its claim is improperly classified in the Schedules or is listed in an incorrect amount and who desires to have its claim allowed in a different classification or amount other than that identified in the Schedules;
 - c. any former or present full-time, part-time, salaried, or hourly employees must submit Proofs of Claim relating to any grievance, including claims for wrongful termination, discrimination, harassment, hostile work environment, retaliation, and/or unpaid severance prior to the General Bar Date to the extent grounds for such grievances arose on or prior to the Petition Date; *provided* that current employees of the Debtors are not required to file a proof of claim for wages, commissions, or benefits if an order of this Court authorized the Debtors to honor such claim in the ordinary course of business;
 - d. any entity that believes that its prepetition claim as listed in the Schedules is not an obligation of the specific Debtor against which the claim is listed and that desires to have its claim allowed against a Debtor other than that identified in the Schedules; and
 - e. any entity who believes that its claim against a Debtor is or may be an administrative expense pursuant to section 503(b)(9) of the Bankruptcy Code.
- C. Parties Who Do Not Need to File Claim Forms.** Certain parties are not required to file a proof of claim. The Court may, however, enter one or more separate orders at a later

time requiring holders of claims to file proofs of claim and setting related deadlines. If the Court does enter such an order, you will receive notice of it.

The following persons or entities holding claims that would otherwise be subject to the applicable Bar Date need **not** file proofs of claim:

- a. the U.S. Trustee, on account of claims for fees payable pursuant to 28 U.S.C. § 1930;
- b. any entity that already has filed a signed proof of claim against the applicable Debtor with KCC in a form substantially similar to Official Form 410 with respect to the claim asserted therein;
- c. any person or entity whose claim is listed on the Schedules if: (i) the claim is **not** scheduled as any of “disputed,” “contingent,” or “unliquidated;” and (ii) such person or entity agrees with the amount, nature, and priority of the claim as set forth in the Schedules;
- d. any person or entity whose claim has previously been allowed by order of the Court;
- e. any person or entity whose claim has been paid in full by the Debtors pursuant to the Bankruptcy Code or in accordance with an order of the Court;
- f. a current employee of the Debtors, if an order of this Court authorized the Debtors to honor such claim in the ordinary course of business as a wage, commission, or benefit; *provided* that such current employee must submit a proof of claim by the General Bar Date for all other claims arising before the Petition Date;
- g. any person or entity holding an equity interest in any Debtor;
- h. any Debtor having a claim against another Debtor;
- i. any entity holding a claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an expense of administration incurred in the ordinary course, *provided* that any entity asserting a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must assert such claims by filing a request for payment or a proof of claim on or prior to the Claims Bar Date;
- j. any person or entity holding a claim for which a separate deadline is fixed by the Court; and
- k. holders of claims for fees and expenses of professionals retained in these chapter 11 cases.

Instructions for Filing Claim Forms

- A. ***Contents of Claim Form.*** Each proof of claim form must (i) be written in English; (ii) include a claim amount denominated in United States dollars (and to the extent such claim is converted to United States dollars, the conversion rate used in such conversion); (iii) conform substantially to Official Form 410; and (iv) be signed by the holder of the claim or by an authorized agent of the holder of the claim (along with documentation of such authorization).
- B. ***Section 503(b)(9) Claim.*** Any proof of claim asserting a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must also: (i) include the value of the goods delivered to and received by the Debtors in the twenty (20) days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the section 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).
- C. ***Original Signatures Required.*** Only (i) original proof of claim forms signed electronically or in ink or (ii) proof of claim forms submitted and signed electronically using the electronic filing interface available at <https://www.kccllc.net/eiger> will be deemed acceptable for purposes of claims administration. Proof of claim forms sent by facsimile or electronic mail will **not** be accepted.
- D. ***Identification of the Debtor Entity.*** Each proof of claim form must clearly identify the Debtor against which a claim is asserted, including the individual Debtor's case number. A proof of claim form filed without identifying a specific Debtor will be deemed as filed only against Eiger BioPharmaceuticals, Inc.
- E. ***Claim Against Multiple Debtor Entities.*** Except as otherwise provided in the Bar Date Order or any other order of the Court, each proof of claim must state a claim against only one Debtor and clearly indicate the Debtor against which the claim is asserted. To the extent more than one Debtor is listed on the proof of claim form, such claim may be treated as if filed only against Eiger BioPharmaceuticals, Inc.
- F. ***Supporting Documentation.*** Each proof of claim form must include supporting documentation in accordance with Bankruptcy Rules 3001(c) and 3001(d). Any supporting documentation that includes personally identifiable information should be redacted or hidden prior to submission.
- G. ***Timely Service.*** Each proof of claim form, including supporting documentation, must be filed or submitted, including supporting documentation, through any of the following methods: (i) electronic submission through PACER (Public Access to Court Electronic Records at <https://ecf.txnb.uscourts.gov/>); (ii) via the electronic filing interface available at <https://www.kccllc.net/eiger> or (iii) by U.S. mail, overnight U.S. mail, or other hand delivery system, so as to be **actually received** by KCC on or before the applicable Bar

Date at the following address: Eiger Claims Processing Center c/o KCC 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245.

- H. ***Receipt of Service.*** Claimants wishing to receive acknowledgment that their proof of claim forms were received by KCC must submit (i) a copy of the proof of claim form; and (ii) a self-addressed, stamped envelope.

Consequences of Failing to Timely File Your Claim Form

Pursuant to the Bar Date Order and in accordance with Bankruptcy Rule 3003(c)(2), if you or any party or entity who is required, but fails, to file a proof of claim in accordance with the Bar Date Order on or before the applicable Bar Date, please be advised that (absent the consent of the Debtors, in their sole discretion):

- **YOU WILL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST THE DEBTORS (OR FILING A PROOF OF CLAIM WITH RESPECT THERETO);**
- **YOU WILL NOT RECEIVE ANY DISTRIBUTION IN THESE CHAPTER 11 CASES ON ACCOUNT OF THAT CLAIM; AND**
- **YOU WILL NOT BE PERMITTED TO VOTE ON ANY CHAPTER 11 PLAN OR PLANS FOR THE DEBTORS ON ACCOUNT OF THAT CLAIM OR RECEIVE FURTHER NOTICES REGARDING SUCH CLAIM.**

Amendments to the Debtors' Schedules

- A. **Amendments to Schedules.** In the event that the Debtors amend their Schedules after the date of this notice, the Debtors will provide holders of claims that are affected by any such amendment notice of the amendment, and such parties will be given an opportunity to file proofs of claim before a new deadline that will be specified in that future notice.
- B. **Amended Schedules Bar Date.** The Court has approved the later of (i) the General Bar Date or the Governmental Bar Date, as applicable, and (ii) twenty one (21) days from the date on which the Debtors mail notice of the amendment to the Schedules as the date by which holders of claims affected by the amendment must file proofs of claim with respect to such claims.

Reservation of Rights

Nothing contained in this notice is intended to or should be construed as a waiver of the Debtors' right to: (a) dispute, or assert offsets or defenses against, any filed claim or any claim listed or reflected in the Schedules as to the nature, amount, liability, or classification thereof; (b) subsequently designate any scheduled claim as disputed, contingent, or unliquidated; or (c) otherwise amend or supplement the Schedules.

Dated: [•], 2024
Dallas, Texas

/s/

Thomas R. Califano (TX Bar No. 24122825)
William E. Curtin (admitted *pro hac vice*)
Anne G. Wallace (admitted *pro hac vice*)
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

*Counsel to the Debtors and Debtors in
Possession*

Exhibit 2

Proof of Claim Form

United States Bankruptcy Court for the Northern District of Texas

Indicate Debtor against which you assert a claim by checking the appropriate box below. **(Check only one Debtor per claim form.)**

- Eiger BioPharmaceuticals, Inc. (Case No. 24-80040)
 EB Pharma LLC (Case No. 24-80042)
 EigerBio Europe Limited (Case No. 24-80044)
 EBPI Merger Inc. (Case No. 24-80041)
 Eiger BioPharmaceuticals Europe Limited (Case No. 24-80043)

Modified Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

Part 1: Identify the Claim

1. **Who is the current creditor?** _____
 Name of the current creditor (the person or entity to be paid for this claim)
 Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	Name _____ Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) Number Street _____ City State ZIP Code _____ Country _____ Contact phone _____ Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	Name _____ Number Street _____ City State ZIP Code _____ Country _____ Contact phone _____ Contact email _____

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ _____ Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____%
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	Amount entitled to priority \$ _____
<input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

City State ZIP Code Country

Contact phone _____ Email _____

Modified Official Form 410

Instructions for Proof of Claim

United States Bankruptcy Court

12/15

These instructions and definitions generally explain the law. In certain circumstances, such as bankruptcy cases that debtors do not file voluntarily, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy process and privacy regulations.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571

PLEASE SEND COMPLETED PROOF(S) OF CLAIM TO:

Eiger Claims Processing Center
c/o KCC
222 N. Pacific Coast Hwy., Ste. 300
El Segundo, CA 90245

Alternatively, your claim can be filed electronically on KCC's website at <https://epoc.kccllc.net/Eiger>

How to fill out this form

■ **Fill in all of the information about the claim as of the date the case was filed.**

■ **Fill in the caption at the top of the form**

■ **If the claim has been acquired from someone else, then state the identity of the last party who owned the claim or was the holder of the claim and who transferred it to you before the initial claim was filed.**

■ **Attach any supporting documents to this form.** Attach redacted copies of any documents that show that the debt exists, a lien secures the debt, or both. (See the definition of *redaction* on the next page.)

Also attach redacted copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added. Federal Rule of Bankruptcy Procedure (called "Bankruptcy Rule") 3001(c) and (d).

■ **Do not attach original documents because attachments may be destroyed after scanning.**

■ **If the claim is based on delivery health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the claim and in the attached documents.**

■ **A Proof of Claim form and any attached documents must show only the last 4 digits of any social security number, individual's tax identification number, or financial account number, and only the year of any person's date of birth.** See Bankruptcy Rule 9037.

■ **For a minor child, fill in only the child's initials and the full name and address of the child's parent or guardian.** For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*. See Bankruptcy Rule 9037.

Confirmation that the claim has been filed

To receive confirmation that the claim has been filed, either enclose a stamped self-addressed envelope and a copy of this form or you may view a list of filed claims in this case by visiting the Claims and Noticing and Agent's website at <http://www.kccllc.net/Eiger>

Understand the terms used in this form

Administrative expense: Generally, an expense that arises after a bankruptcy case is filed in connection with operating, liquidating, or distributing that bankruptcy estate. 11 U.S.C. § 503

Claim: A creditor's right to receive payment for a debt that the debtor owed on the date the debtor filed for bankruptcy. 11 U.S.C. § 101 (5). A claim may be secured or unsecured.

Claim Pursuant to 11 U.S.C. §503(b)(9): A claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such claim.

Creditor: A person, corporation, or other entity to whom a debtor owes a debt that was incurred on or before the date the debtor filed for bankruptcy. 11 U.S.C. §101 (10).

Debtor: A person, corporation, or other entity to who is in bankruptcy. Use the debtor's name and case number as shown in the bankruptcy notice you received. 11 U.S.C. §101 (13).

Evidence of perfection: Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded, such as a mortgage, lien, certificate of title, or financing statement.

Information that is entitled to privacy: A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if the trustee or someone else in interest objects to the claim.

Priority claim: A claim within a category of unsecured claims that is entitled to priority under 11 U.S.C. §507(a). These claims are paid from the available money or property in a bankruptcy case before other unsecured claims are paid. Common priority unsecured claims include alimony, child support, taxes, and certain unpaid wages.

Proof of claim: A form that shows the amount of debt the debtor owed to a creditor on the date of the bankruptcy filing. The form must be filed in the district where the case is pending.

Redaction of information: Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out information entitled to **privacy** on the *Proof of Claim* form and any attached documents.

Do not file these instructions with your form.

Secured claim under 11 U.S.C. §506(a): A claim backed by a lien on particular property of the debtor. A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien. Any amount owed to a creditor that is more than the value of the property normally may be an unsecured claim. But exceptions exist; for example, see 11 U.S.C. § 1322(b) and the final sentence of 1325(a).

Examples of liens on property include a mortgage on real estate a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In states, a court judgment may be a lien.

Setoff: Occurs when a creditor pays itself with money belonging to the debtor that it is holding, or by canceling a debt it owes to the debtor.

Uniform claim identifier: An optional 24-character identifier that some creditors use to facilitate electronic payment.

Unsecured claim: A claim that does not meet the requirements of a secured claim. A claim may be unsecured in part to the extent that the amount of the claim is more than the value of the property on which a creditor has a lien.

Offers to purchase a claim

Certain entities purchase claims for an amount that is less than the face value of the claims. These entities may contact creditors offering to purchase their claims. Some written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, or the debtor. A creditor has no obligation to sell its claim. However, if a creditor decides to sell its claim, any transfer of that claim is subject to Bankruptcy Rule 3001(e), any provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.) that apply, and any orders of the bankruptcy court that apply.

Exhibit 3

Publication Notice

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

<p>In re:</p> <p>EIGER BIOPHARMACEUTICALS, INC., <i>et al.</i>¹</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 24-80040 (SGJ)</p> <p>(Jointly Administered)</p>
--	--

**NOTICE OF (I) DATE BY WHICH PARTIES MUST FILE PROOFS OF CLAIM; AND
(II) PROCEDURES FOR FILING PROOFS OF CLAIM AGAINST THE DEBTORS**

The debtors and debtors in possession on the above-captioned chapter 11 cases (collectively, the “Debtors”) (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on April 1, 2024 (the “Petition Date”).

The Court has established the following Bar Dates as those dates by which parties holding claims against the Debtors arising prior to the Petition Date must file proofs of claim: (a) **July 22 at 4:00 p.m. (prevailing Central Time)** is the date by which all entities (which includes individual persons, estates, trusts, partnerships, and corporations, among others) must file proofs of claims (the “General Bar Date”); (b) **September 30, 2024 at 4:00 p.m. (prevailing Central Time)** is the date by which all governmental units holding claims (whether secured, unsecured priority, or unsecured non-priority) must file proofs of claim, including claims for unpaid taxes, if any, whether such claims arise from prepetition tax years or periods, or prepetition transactions to which the Debtors were a party (the “Governmental Bar Date”); and (c) to the extent applicable, the later of (i) the General Bar Date or the Governmental Bar Date, as applicable, and (ii) twenty one (21) days from the date on which the Debtors mail notice of an amendment to the Schedules is the date by which holders of claims affected thereby must file proofs of claims (the “Amended Schedules Bar Date”).

THE BAR DATES ESTABLISHED BY THE BAR DATE ORDER AND REFERENCED IN THIS NOTICE SUPERSEDE ANY BAR DATES ESTABLISHED, FILED, NOTICED, OR PREVIOUSLY SERVED IN THESE CHAPTER 11 CASES.

ANY PERSON OR ENTITY WHO FAILS TO FILE A PROOF OF CLAIM, INCLUDING ANY REQUEST FOR PAYMENT UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE, ON OR BEFORE THE CLAIMS BAR DATE OR THE GOVERNMENTAL BAR

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 2100 Ross Avenue, Dallas, Texas 75201.

DATE, AS APPLICABLE, SHALL NOT BE TREATED AS A CREDITOR WITH RESPECT TO SUCH CLAIM FOR THE PURPOSES OF VOTING AND DISTRIBUTION ON ANY CHAPTER 11 PLAN.

Timely Service. Each proof of claim form, including supporting documentation, must be filed or submitted, including supporting documentation, through any of the following methods: (i) electronic submission through PACER (Public Access to Court Electronic Records at <https://ecf.txnb.uscourts.gov/>); (ii) via the electronic filing interface available at <https://www.kccllc.net/eiger> or (iii) by U.S. mail, overnight U.S. mail, or other hand delivery system, so as to be **actually received** by KCC on or before the applicable Bar Date at the following address:

For First-Class Mail or Overnight Mail to:

Eiger Claims Processing Center
c/o Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

**PROOFS OF CLAIM SUBMITTED BY FACSIMILE
OR ELECTRONIC MAIL WILL NOT BE ACCEPTED.**

Contents of Claim Form. Each proof of claim form must (i) be written in English; (ii) include a claim amount denominated in United States dollars (and to the extent such claim is converted to United States dollars, the conversion rate used in such conversion); (iii) conform substantially to Official Form 410; and (iv) be signed by the holder of the claim or by an authorized agent of the holder of the claim (along with documentation of such authorization).

Section 503(b)(9) Claim. Any proof of claim asserting a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must also: (i) include the value of the goods delivered to and received by the Debtors in the twenty (20) days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the section 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).

Original Signatures Required. Only (i) original proof of claim forms signed electronically or in ink or (ii) proof of claim forms submitted and signed electronically using the electronic filing interface available at <https://www.kccllc.net/eiger> will be deemed acceptable for purposes of claims administration. Proof of claim forms sent by facsimile or electronic mail will **not** be accepted.

Identification of the Debtor Entity. Each proof of claim form must clearly identify the Debtor against which a claim is asserted, including the individual Debtor's case number. A proof of claim form filed without identifying a specific Debtor will be deemed as filed only against Eiger BioPharmaceuticals, Inc.

Claim Against Multiple Debtor Entities. Except as otherwise provided in the Bar Date Order or any other order of the Court, each proof of claim must state a claim against only one Debtor and clearly indicate the Debtor against which the claim is asserted. To the extent more than one Debtor is listed on the proof of claim form, such claim may be treated as if filed only against Eiger BioPharmaceuticals, Inc.

Supporting Documentation. Each proof of claim form must include supporting documentation in accordance with Bankruptcy Rules 3001(c) and 3001(d). Any supporting documentation that includes personally identifiable information should be redacted or hidden prior to submission.

Additional Information. If you have any questions regarding the claims processing and/or if you wish to obtain a copy of the Bar Date Motion, Bar Date Order, proof of claim form, or related documents (and/or any other pleadings filed in these chapter 11 cases) you may do so by: (i) visiting the website of the Debtors' claims, noticing, and solicitation agent, Kurtzman Carson Consultants LLC ("KCC") at: <https://www.kccllc.net/eiger>, (ii) calling (888) 733-1544 (Toll-Free) or (310) 751-2638 (International), and/or (iii) emailing <http://www.kccllc.net/Eiger/inquiry>. Please note that KCC **cannot** advise you on how to file, or whether you should file, a proof of claim.

Exhibit 4

Apelian First Day Declaration

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

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

*Proposed Attorneys for the Debtors
and Debtors in Possession*

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

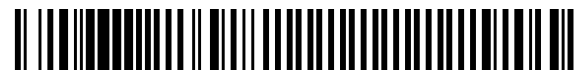
(Joint Administration Requested)

**DECLARATION OF DAVID APELIAN IN SUPPORT
OF THE CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, David Apelian, M.D., hereby declare under penalty of perjury as follows:

1. I am the Chief Executive Officer (“CEO”) of Debtor Eiger Biopharmaceuticals, Inc. (“Eiger”), the ultimate parent of each of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors” or the “Company”). I am over the age 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.



18 and authorized to submit this first day declaration (this “Declaration”) on behalf of each of the Debtors.

2. I served as interim CEO of Eiger from December 2022 until June 2023, when I was appointed as CEO. I previously acted as Chief Operating Officer and Executive Medical Officer of Eiger from January 2018 to June 2019. I then briefly served as CEO of BlueSphere Bio, Inc. from July 2019 to October 2022, prior to transitioning to my role as interim CEO of Eiger. I have also served as a board member at Eiger since June 2017. I have over 25 years of clinical development and regulatory experience relating to pharmaceutical products, serving in numerous leadership roles throughout this time for various companies. Prior to my time at Eiger, I served as executive vice president and chief medical officer of Achillion Pharmaceuticals, Inc., where I was responsible for creating a portfolio strategy, managing the company’s clinical development programs, and securing an instrumental partnership for Achillion. I also served as Clinical Director and Medical Leader at Bristol-Myers Squibb for the development of Baraclude[®] (entecavir), a treatment for chronic hepatitis B virus. Prior to that, I served as Clinical Director in the Department of Hepatology & Gastroenterology at Schering Plough, where I coordinated a supplemental new drug application filing for the treatment of certain chronic conditions. I hold a PhD in Biochemistry from Rutgers University, an MD from the University of Medicine and Dentistry of New Jersey, an MBA from Quinnipiac University, and a bachelor’s degree in Biochemistry from Rutgers University. I completed my residency training in pediatrics at New York Hospital, Cornell Medical Center, and was previously board certified in Pediatrics.

3. In my capacity as CEO of Eiger, I am familiar with the facts and circumstances set forth herein, which, except as otherwise noted, are based on my actual knowledge as well as information and advice provided to me by the Company’s management and certain of its

professionals and advisors. In addition, the statements made herein are based, in whole or in part, upon my review of public and non-public documents and my discussions with other members of Eiger's management team and advisors on whom I have relied. I am generally familiar with Eiger's businesses, financial condition, day-to-day operations, and the circumstances leading to the commencement of these chapter 11 cases (the "Chapter 11 Cases"). I believe, to the best of my knowledge, that the facts and circumstances set forth herein are true and correct. References to bankruptcy, the chapter 11 process, and related legal matters are based on my understanding of such in reliance on the explanation provided by counsel to Eiger. If called upon to testify, I would testify competently to the facts set forth herein.

4. On April 1, 2024 (the "Petition Date"), each of the Debtors commenced a voluntary case 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"). As described herein, the Debtors filed these cases to transition their important, life-saving products to buyers who could ensure a stable supply of these products to patients and who could continue to develop other important drugs which the Debtors have in various stages of FDA approval. Because of defaults declared by their secured lender Innovatus and the specter of resulting enforcement actions, the Debtors require the protection of this Court through that process.

5. I am submitting this Declaration for the purpose of apprising the Court and other parties in interest of the history of the Debtors, their capital structure and debt, the circumstances that led to the commencement of these Chapter 11 Cases, and the motions and other applications filed with the Court, including the "first day motions" (the "First Day Motions").

6. To better assist the Court, this Declaration is organized in four sections. Part I provides background information on the Debtors' corporate history, operations, and assets, as well

as an overview of the pharmaceutical market. Part II outlines the Debtors' capital structure and other debt obligations. Part III describes the circumstances leading to the filing of these Chapter 11 Cases. Part IV sets forth the evidentiary basis for each of the First Day Motions and expresses the Debtors' belief that the Court should approve the same.

INTRODUCTION

7. The Company is a commercial-stage biopharmaceutical company focused on the development of innovative therapies for rare diseases, and all of the Debtors' rare disease programs have FDA Breakthrough Therapy designation. The Debtors focus on developing and commercializing first-in-class, well-characterized drugs for life-threatening, rare and serious diseases with high unmet medical needs and no approved therapies. The Company filed these chapter 11 cases for two primary reasons: (1) to ensure stability and continuity in the provision of life-saving drugs for patients, including children, worldwide and (2) to institute a sale process designed to maximize the value of all the Debtors' assets for the benefit of all the Debtors' stakeholders. The Company takes its duties and responsibilities owed to the patients and its stakeholders with the utmost seriousness and believes that the chapter 11 process provides the least disruption and greatest accretive value to all parties.

8. As set forth below, the lead Debtor—Eiger BioPharmaceuticals, Inc.—is a NASDAQ listed company whose stock trading price indicates that it is likely to be solvent. Accordingly, the Debtors must consider the interests of all constituents—patients, shareholders and creditors through this process.

9. In an effort to continue the sale process that began in late 2023 and to maximize the value of the Company's assets on an expedited basis, the Debtors have filed a motion (the "Bid Procedures Motion") contemporaneously with their First Day Motions seeking, among other things, approval of a stalking horse purchase agreement (the "Stalking Horse APA") with Sentyln

Therapeutics, Inc. (“Sentynl” or the “Stalking Horse Purchaser”) for the acquisition and sublicense of the Zokinvy assets (the “Zokinvy Sale Transaction”) at a purchase price of \$26 million if the Zokinvy Sale Transaction closes (the “Closing”) no later than April 24, 2024, provided, however, that for every day after April 24, 2024 that Closing does not occur, stalking horse bid decreases by an amount equal to \$214,285.71 (the “Zokinvy Stalking Horse Bid”), as further explained in the Apelian Bid Procedures Declaration filed concurrently herewith.² The purchase price reduction reflects Zokinvy’s revenue generating capability and, as time passes, the revenue that the ultimate purchaser would not recoup through the purchase. In any event, the Stalking Horse Bid encompasses a minimum purchase price of \$20 million, provided that the Zokinvy Sale Transaction closes no later than May 31, 2024. Originally, the Debtors and Sentynl were negotiating the terms of an out-of-court Zokinvy Sale Transaction, but Sentynl has now agreed to serve as Stalking Horse Purchaser, with the Stalking Horse Bid subject to higher or otherwise better offers in accordance with the proposed bidding procedures (the “Bidding Procedures”).

10. The Bidding Procedures will also formalize a process for a sale of the Company’s other assets, including Lonafarnib (HDV), Avexitide, and Lambda (respiratory) (including the Zokinvy Sale Transaction, the “Sale Transaction(s)”). The Bid Procedures Motion, subject to the Court’s approval, will facilitate a competitive auction process, allowing all interested parties the opportunity to bid for the Debtors’ assets. The Debtors received significant interest in their assets

² The “Apelian Bid Procedures Declaration” refers to the *Declaration of David Apelian in Support of the Debtors’ Motion for Entry of an Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentynl Therapeutics, Inc. as the 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 (B) Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief.*

prior to these Chapter 11 Cases, and the Bidding Procedures will bring uniformity and control to a process designed to maximize value for all of the Debtors' stakeholders.

11. The Debtors' proposed timeline for these cases is intended to avoid the operational disruption and administrative burden of an uncontrolled or lengthy process balanced with providing sufficient time to identify appropriate buyers and create a competitive process. The Debtors cannot risk potential harm to the supply chain for patients that are reliant on these drugs. The Bid Procedures Motion seeks to balance the need to both maximize value, while limiting any disruption to commercialized products or delay to advancement of drugs in development.

I. BACKGROUND

A. Corporate Structure and History.

12. Eiger was founded in 2008 as a privately-held biopharmaceutical company focused on bringing to market novel products and "orphan drugs" for the treatment of rare diseases.³ In March 2016, the privately-held Eiger completed a business combination with Celladon Corporation ("Celladon"), a biotechnology company historically focused on the development of cardiovascular gene therapy, in accordance with the terms of the Agreement and Plan of Merger and Reorganization (the "Merger Agreement"), dated as of November 18, 2015. Pursuant to the Merger Agreement, Eiger acquired a wholly-owned subsidiary of Celladon, with Eiger surviving as a wholly-owned subsidiary of Celladon. Immediately following the merger, on March 23, 2016, Celladon changed its name to "Eiger BioPharmaceuticals, Inc." and Celladon's existing common stock began trading on The Nasdaq Global Market ("Nasdaq") under the ticker symbol "EIGR."⁴

13. An organizational chart of the Company is attached hereto as **Exhibit A**.

³ Orphan drugs are drugs intended to treat rare diseases or conditions. According to the FDA, a disease is classified as a "rare" disease if it affects less than 200,000 people in the United States.

⁴ Celladon completed its initial public offering ("IPO") of its common stock in February 2014 and began trading on the Nasdaq shortly thereafter under the symbol "CLDN."

14. As of the Petition Date, the Company employs approximately nine full-time employees across the United States and Europe. The majority of the employees are engaged in manufacturing, research and development activities, while the remaining employees are engaged in general management and administration of the business. None of the Company's employees are represented by a labor union or subject to collective bargaining agreements.

B. Overview of the Pharmaceutical Industry.

15. The biopharmaceutical industry is highly competitive. There are many major pharmaceutical companies, specialty pharmaceutical companies, biotechnology companies, public and private universities, and research organizations actively engaged in research and development of product candidates which may target the same markets as the Company's products.

16. Government authorities in the United States, at the federal, state, and local level, and in other countries and jurisdictions extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, packaging, storage, recordkeeping, labeling, advertising, promotion, distribution, marketing, post-approval monitoring and reporting, and import and export of pharmaceutical products. The processes for obtaining regulatory approvals in the United States and in foreign countries and jurisdictions, along with subsequent compliance with applicable statutes and regulations and other regulatory authorities, requires substantial time and financial resources.

17. All of the Company's current products and product candidates are subject to regulation in the United States by the Food and Drug Administration (the "FDA") under the Federal Food, Drug, and Cosmetic Act. The FDA imposes extensive pre- and post-market regulation of any new drugs and the approval process is rigorous and inherently uncertain. Product development in the United States is comprehensive and typically involves a number of steps, including: (i) completion of preclinical laboratory and animal tests, submission to the FDA of an

investigational new drug application, which must become effective before clinical testing may commence, (ii) approval by an independent institutional review board at each clinical site before each trial may be initiated, (iii) performance of adequate and well controlled clinical trials to establish the safety, efficacy, purity and/or potency of the product for each indication for which FDA approval is sought, (iv) submission to the FDA of a new drug application (“NDA”) or biologics license application (“BLA”), (v) satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the product is produced, and (vi) FDA review and approval of the NDA or BLA. Clinical trials to support an NDA or BLA for marketing approval are typically conducted in three sequential phases:

- **Phase 1**: The product candidate is initially introduced into healthy human subjects or patients with the target disease or condition, and is tested to assess safety, dosage tolerance, pharmacokinetics and pharmacological activity, and, when possible, to ascertain evidence of efficacy;
- **Phase 2**: The trials are conducted using a limited patient population for the purposes of preliminarily determining the effectiveness of the product in that particular indication, ascertaining dosage tolerance, discerning the optimal dosage, and identifying possible adverse effects and safety risks; and
- **Phase 3**: Phase 3 clinical trials are undertaken to obtain additional information from an expanded and diverse patient population, at multiple, geographically dispersed clinical trial sites, in randomized controlled studies often with a double-blind design to maximize the reproducibility of the study results. These trials are intended to provide sufficient data demonstrating evidence of the safety, efficacy, purity and potency of the product such that the FDA can evaluate the overall benefit-risk of the product and provide adequate information for the labeling and package insert for the product.

18. Notwithstanding this time-intensive and rigorous approval process, the FDA offers several expedited development and review programs for qualifying product candidates, such as the Fast Track program, which expedites the process for reviewing new products that are intended to treat serious or life-threatening diseases and demonstrate the potential to address such unmet

needs, and breakthrough therapy designation (“Breakthrough Therapy Designation”), which similarly expedites the process for products that are intended to treat serious or life-threatening diseases, but also requires preliminary clinical evidence indicating that such product may be effective.

19. Further, the FDA may grant products intended to treat a rare disease or condition an Orphan Drug designation (“Orphan Drug Designation”). While Orphan Drug Designation does not abridge the timeline for regulatory review and approval process, it does entitle the first grantee to be approved to treat a disease with FDA’s Orphan Drug Designation a seven-year period of marketing exclusivity in the United States for that product, as well as certain tax credits for research expenses and a waiver of the application user fee.

20. While the FDA regulates any new drugs in the United States, a similar entity—the European Medicines Agency (the “EMA”)—serves as an analogous regulatory body for all European Member states, as well as Iceland, Liechtenstein, and Norway. Like the FDA, the EMA will also grant Orphan Drug Designation to qualifying products for the treatment, prevention, or diagnosis of life-threatening or chronically debilitating conditions. Further, in many ways, the EMA’s Priority Medicine Scheme (“PRIME”) mirrors the FDA’s Breakthrough Therapy Designation by conferring comparable benefits on qualifying drug product candidates.

C. Overview of the Company’s Business, Products, and Assets.

21. The Company has currently has one FDA-approved product on the market and has others in clinical trial stages, each as described in further detail below.

Advancing Targeted Therapies for Rare Diseases					
Indication	Program	Status	Phase 2	Phase 3	Approved
Progeria	Zokinvy	Generating Revenue			
Post-Bariatric Hypoglycemia (PBH)	Avexitide	Phase 3 Ready			
Congenital Hyperinsulinism (HI)		Phase 3 Ready			
Hepatitis Delta Virus (HDV)	Lonafamib/Ritonavir	On Hold			
	Peginterferon Lambda	On Hold			

i. Products and Clinical Studies.

1. *Lonafarnib*

22. Lonafarnib (“LNF”) is an orally bioavailable, first-in-class farnesylation inhibitor originally developed by Merck & Co. (“Merck”) that the Company has an exclusive license to develop and commercialize, as discussed in further detail below.⁵ In November 2020, the Company received FDA approval for the use of LNF to reduce the risk of mortality of Hutchinson-Gilford progeria syndrome (“HGPS”) and for treatment of processing-deficient progeroid laminopathies (“PL”), collectively known as “progeria,” an ultra-rare and rapidly fatal genetic condition causing accelerated aging in children. Sold under the brand name “Zokinvy,” the medication is the Company’s first and only product that has received FDA approval.

23. The Company commercially launched Zokinvy in the United States in January 2021 and began generating product revenue shortly thereafter. International regulatory approvals

⁵ Published studies demonstrate that farnesylation inhibitors block HDV viral production. Targeting farnesylation or farnesyltransferase, a host target, significantly reduces the likelihood of HDV developing resistance to escape effects of antiviral therapy. See Eiger BioPharmaceuticals, Inc., Annual Report (Form 10-K) (Mar. 13, 2023).

followed beginning in May 2022, with the Pharmaceutical Division at The Ministry of Health of Israel granting regulatory approval for Zokinvy. Then, in July 2022, the Company received marketing authorization under exceptional circumstances for Zokinvy for the treatment of progeria in all 27 European Union member states plus Iceland, Liechtenstein, and Norway. The marketing authorization is valid for five years from date of authorization and is subject to annual reassessment of the benefit/risk profile based on the requirements set forth in the marketing authorization. In August 2022, the United Kingdom's Medicine and Healthcare Products Regulatory Agency granted the Company marketing authorization of Zokinvy.

24. Moreover, the Company continues to receive international regulatory approvals related to the marketing of Zokinvy. In May 2022, the Company entered into a Marketing and Distribution Agreement (the "MDA") with AnGes, Inc. ("AnGes"), a company in Japan, whereby the Company bestowed upon AnGes a right to use the Company's intellectual property and seek regulatory approval for commercialization of Zokinvy in Japan. In January 2024, AnGes received such marketing approval for Zokinvy from the Ministry of Health, Labour, and Welfare in Japan for the treatment of HGPS and PL. Accordingly, pursuant to the MDA, AnGes now holds the marketing authorization for Zokinvy in Japan and is responsible for all regulatory interactions. In turn, AnGes is required to pay the Company \$1.5 million upon achieving certain pre-commercialization milestones.

25. Upon licensing LNF from Merck, the Company also began researching alternative uses of LNF and found a potentially viable solution for the treatment of hepatitis delta virus ("HDV"),⁶ the most severe form of viral hepatitis for which there is currently no FDA-approved

⁶ Chronic HDV infection can lead to a rapid progression to liver cirrhosis, a greater likelihood of developing liver cancer, and has the highest fatality rate of all the chronic hepatitis infections.

therapy. The Company's treatment involves combining LNF with ritonavir, an antiretroviral medication, in order to reduce HDV's viral load. LNF for treatment of HDV infection has been granted Orphan Drug designation by the FDA and EMA, Fast Track and Breakthrough Therapy Designations by the FDA and PRIME designation by the EMA.

26. In June 2023, the Company completed its Phase 3 study (the "D-LIVR Study") for the use of LNF on patients with chronic HDV and concluded that the drug exhibited a statistically significant likelihood of efficacy. At a pre-NDA meeting with the FDA, the regulatory agency expressed that it was supportive of a potential path to an NDA approval for LNF-based regimens for the treatment of HDV.

2. *Avexitide*

27. Avexitide is a well-characterized peptide in development for the treatment the treatment of post-bariatric hypoglycemia ("PBH") and other forms of hyperinsulinemic hypoglycemia ("HH") arising after gastrointestinal surgeries. These disorders are characterized by exaggerated secretion of GLP-1 after meals, dysregulated secretion of insulin, followed by a rapid drop in blood sugar. Avexitide is the only drug in development for PBH with Breakthrough Therapy designation by the FDA. Avexitide is also in development for congenital hyperinsulinism ("HI"), an ultra-rare, life-threatening, pediatric disorder of persistent hypoglycemia that results in irreversible brain damage in up to 50% of children with the condition. For both PBH and HI, Avexitide has completed Phase 2 and is ready for Phase 3.

28. Avexitide has been granted Breakthrough Therapy designation by the FDA for the treatment of HI, Orphan Drug designation by the EMA for the treatment of HI and Orphan Drug designation by the FDA for the treatment of hyperinsulinemic hypoglycemia, which includes HI.

Avexitide has also been granted Rare Pediatric Disease designation by the FDA for the treatment of HI. *Peginterferon Lambda*

29. The Company licensed worldwide rights to Peginterferon Lambda (“Lambda”), a well-tolerated interferon that stimulates immune responses critical for the development of host protection during viral infections, from Bristol Myers Squibb Company (“Bristol”) in April 2016. Concurrently with its efforts to utilize LNF for the treatment of HDV, the Company sought to develop a separate treatment utilizing Lambda for the treatment of HDV.

30. In the early stages of its development, Lambda for the treatment of HDV infection received Orphan Drug designation from the FDA and the EMA and Fast Track and Breakthrough Therapy designations from the FDA. Due to the initially promising results in Phase 2 of the Company’s study, the FDA and EMA authorized a single pivotal, randomized Phase 3 study of Lambda as a monotherapy for treatment of HDV (the “LIMIT Study,” and together with the D-LVR Study, the “HDV Development Programs”).

31. Along with the LIMIT Study, the Company began exploring opportunities to use Lambda to treat COVID-19 and other viral respiratory infections. Early studies suggested potential efficacy in this domain and the Company remains open to further strategic development.

32. In September 2023, following its quarterly safety review, the Data Safety Monitoring Board (the “DSMB”) observed four patients in the LIMIT Study with hepatobiliary events that resulted in liver decompensation. Shortly thereafter, the Company announced its decision to discontinue Phase 3 of its LIMIT Study, citing recommendations from the DSMB and FDA as the reason for such cessation. Regardless, the Company believes that Lambda may have potential uses for development in hepatitis B virus (HBV), respiratory diseases such as COVID-19 and influenza, as well as other virology indications.

ii. Manufacturing and Supply.

33. The Company does not own or operate manufacturing facilities for the production of its products, nor does it have any plans to build such facilities. Therefore, the Company heavily relies on third parties for the commercial manufacturing of Zokinvy and all of its clinical product candidates. The Debtors have manufacturing agreements with certain contract manufacturing organizations (“CMOs”) that manufacture the Debtors’ products under the supervision of the Debtors’ personnel.

iii. Research and Development.

34. Research and development is the foundation upon which the Company is built, and therefore, the Company invests heavily in this area. Historically, the largest component of the Company’s operating expenses has been the investment in clinical trials, including contract manufacturing arrangements, clinical trial material related costs, and other research and development activities. In 2023, the Company’s research and development expenses for the year were approximately \$62.3 million. Notably, however, this number reflects an approximate \$13 million decrease compared to the same period in 2022, due in large part to a decline in expenditures related to the HDV Development Programs, and a decrease in the use of consulting and advisory services, and a reduction of Company personnel.

iv. Intellectual Property and License Agreements.

35. The Company has sought to protect its proprietary position by, among other methods, pursuing and obtaining patent protection in various jurisdictions related to its proprietary technology, inventions, improvements, platforms, and product candidates that are important to the development and implementation of its business. The Company’s patent portfolio is intended to cover, but is not limited to, its product candidates and components thereof, their methods of use

and processes for their manufacture, and any other inventions that are commercially important to the Company's business. Further, the Company has rights to intellectual property, through licenses from third parties and under patents that the Company does not own, to develop and commercialize certain product candidates.

1. *The Merck License.*

36. In September 2010, the Company entered into an exclusive license agreement (the "Merck Agreement") with Schering Corporation, subsequently acquired by Merck, which provided the Company with the exclusive right to develop and commercialize LNF (such license, the "Merck License"). The Company is obligated to pay Merck up to an aggregate of \$27.0 million in development milestones and is required to pay tiered royalties based on aggregate annual net sales of all licensed products, ranging from mid-single to low double-digit royalties on net sales. This obligation expires on a country-by-country and product-by-product basis on the later of the expiration of the last to expire patent assigned to the Company under the Merck Agreement on the tenth anniversary of the first commercial sale of the product.

37. On May 15, 2018, the Company entered into an amendment to the Merck Agreement (the "First Merck Amendment"), which provided for expansion of the existing exclusively licensed field of use under the Merck License to include all uses of LNF related to the treatment of HGPS at no cost to the Company. Pursuant to the First Merck Amendment, the Company has the sole responsibility and continuing obligation to manufacture and supply LNF to The Progeria Research Foundation ("PRF").

38. On November 3, 2020, the Company entered into a second amendment to the Merck Agreement, which expanded the definition of HGPS to also include progeroid laminopathies.

2. *The PRF Collaboration Agreement.*

39. Concurrently with its execution of the First Merck Amendment, on May 15, 2018, the Company entered into a Collaboration and Supply Agreement with PRF (the “PRF Collaboration Agreement”). Under the PRF Collaboration Agreement, PRF granted the Company a non-exclusive, world-wide, royalty-free, sub-licensable license pertaining to all intellectual property and data controlled by PRF to prepare and file any NDA for a product containing LNF for progeria. In exchange, the Company is subject to numerous requirements, including, but not limited to: (i) exclusively supplying LNF to PRF for use in clinical trials and non-clinical research in progeria, (ii) preparing and sponsoring any NDA submission for LNF for the treatment of progeria to the FDA, (iii) using commercially reasonable efforts to file an NDA for progeria according to a specified timeline, (iv) submitting certain FDA expedited approval requests in connection with an NDA filing, and (v) accepting responsibility for any additional studies necessary for obtaining an NDA for progeria.

v. Tax Credits.

40. Eiger has incurred significant net operating losses (“NOLs”). Further, the Company has earned tax credits related to research and development (“R&D Credits”), and Orphan Drugs (“Orphan Drug Credits,” and, together with the NOLs and the R&D Credits, the “Tax Credits”). As of December 31, 2023, Eiger had generated federal NOLs of approximately \$322.5 million and state NOLs of approximately \$47.1 million. Eiger also had approximately \$1.6 million of federal R&D Credits and approximately \$4 million of state R&D Credits. Further, on account of its treatments that have received Orphan Drug Designation, Eiger has approximately \$15.5 million of federal Orphan Drug Credit carryforwards available. The Tax Credits are potentially of significant value as they may be used, under certain circumstances, to offset future taxable income

or federal tax liabilities in future years. Concurrently herewith, the Debtors have filed an emergency motion seeking to preserve the Tax Credits through a restriction on the transfer and sale of its stock.

II. PREPETITION CAPITAL STRUCTURE

41. As of the Petition Date, the amount outstanding under the Innovatus Loan (as defined below) is approximately \$41.7 million, as follows:

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
Term A	\$41,685,030.30	\$0	\$41,685,030.30
Term B⁷	\$0	\$0	\$0
Term C⁸	\$0	\$0	\$0
Total	\$41,685,030.30	\$0	\$41,685,030.30

A. Secured Debt.

42. On June 1, 2022, certain of the Debtors entered into a loan and security agreement (the “Loan and Security Agreement”) with Innovatus Life Sciences Lending Fund I, LP (“Innovatus” or the “Prepetition Term Loan Lenders”), providing for up to \$75 million funded in three tranches with a maturity date of August 31, 2027 (the “Innovatus Loan”). The floating per annum interest rate of the Loan and Security Agreement is equal to the sum of (a) the greater of (i) the Prime Rate published in the Money Rates section of the Wall Street Journal (or any successor thereto) and (ii) 3.5%, plus (b) 3.75%; provided that, at the election of the Company, up to 2.25% of such rate shall be payable in-kind until the third anniversary of the closing date. As of December 31, 2023, the effective interest rate for the Innovatus Loan is 13.84%.

⁷ The Loan and Security Agreement provides for a Term B Draw (as defined in the Loan and Security Agreement) in an aggregate principal amount of up to \$17,500,000. No amounts were drawn under the Term B tranche.

⁸ The Loan and Security Agreement provides for a Term C Draw (as defined in the Loan and Security Agreement) in an aggregate principal amount of up to \$17,500,000. No amounts were drawn under the Term C tranche.

43. Under the Loan and Security Agreement, the Company is required to make monthly interest-only payments through July 1, 2027, after which the Company is required to make monthly amortizing payments, with the remaining balance of the principal plus accrued and unpaid interest due at maturity. The Loan and Security Agreement is secured by perfected first priority liens on the Company's assets, including a commitment by the Company to not allow any liens to be placed upon the Company's intellectual property.

44. At closing, the Debtors were funded \$40 million under Term A, \$33.5 million of which was used to fully pay off a preexisting loan. The \$17.5 million under each of Term B and Term C became available on the later of (a) the first date that the Company achieves certain development and regulatory milestones applicable to each term and (b) November 1, 2022. Both Term B and Term C draw periods end on the earlier of (a) June 30, 2024 or (b) an event of default.

B. Equity.

1. Common Stock.

45. Eiger's equity is publicly traded, with Eiger authorized to issue 200,000,000 shares of common stock. On January 5, 2024, Eiger effected a 1-for-30 reverse stock split (the "Reverse Stock Split") of its common stock, and, on January 8, 2024, Eiger's common stock began trading on a split adjusted basis. As of January 5, 2024, Eiger had 1,476,247 shares of common stock issued and outstanding. As of March 31, 2024, Eiger's common stock was trading at \$5.01.

2. Stock Purchase Agreement.

46. In connection with entry into the Loan and Security Agreement, the Debtors entered into a stock purchase agreement with Innovatus (the "Stock Purchase Agreement") for the sale of

common stock with an aggregate value of \$5 million. On June 1, 2022, the Debtors issued 749,053 shares of common stock at a per share purchase price of \$6.6751.⁹

3. Open Market Sale Agreement.

47. On March 25, 2022, the Company entered into an Open Market Sale Agreement with Jefferies Group LLC (“Jefferies”), pursuant to which the Company can sell up to a maximum of \$50.0 million of its common stock in offerings that are deemed “at the market” offerings as defined in Rule 415 under the Securities Act, under the Company’s effective shelf registration statement (the “2022 ATM Facility”). In April 2022, the Company completed offerings from the 2022 ATM facility for a total of 2,686,288 shares of its common stock,¹⁰ resulting in net proceeds of \$20.8 million, after deducting commissions costs. No additional offerings were completed since April 2022. The registration statement registering the offer and sale of shares pursuant to the 2022 ATM Facility expired in December 2023.

III. KEY EVENTS LEADING TO CHAPTER 11 FILING

48. As set forth in more detail below, the continuing cash drain on the Company and delays in achieving successful clinical trials for certain products, along with an inability to raise additional capital, required the Company to begin exploring strategic alternatives to address its go-forward liquidity position. The Company engaged advisors to assist in these efforts, including Sidley Austin LLP (“Sidley”), as restructuring counsel, Alvarez & Marsal, as financial advisor, and SSG Advisors, LLC, as investment banker. After exploring various potential pathways, the Company ultimately determined to file these Chapter 11 Cases, all in an effort to maximize the value of its assets and operations for the benefit of its creditors and all parties in interest.

⁹ Or, as adjusted to reflect the January 2024 Reverse Stock Split, 24,967 shares of common stock to Innovatus at a per share price of \$200.25.

¹⁰ Or, as adjusted to reflect the January 2024 Reverse Stock Split, 89,539 shares of common stock.

A. Clinical Trials.

49. The Company's business depends, in large part, on its ability to obtain and maintain required regulatory approvals. Obtaining such regulatory approvals is no easy task, however, and if the Company receives approval at all, it is subject to the FDA's unspecified timeline. The Company faced significant setbacks when it received, and ultimately followed, the DSMB's recommendation to discontinue its Phase 3 LIMIT Study for Lambda-based HDV treatments, despite initial indicators of efficacy in its Phase 1 and Phase 2 trials.

B. Reductions in Force and Other Cost-Saving Measures.

50. Recognizing its strained liquidity position, the Company took actions to preserve its ability to continue operations in the ordinary course. In 2023, the Company reduced its workforce by 18 employees, representing approximately 46% of the Company's workforce. Since then, the Company has further issued reduction in force notifications to a total of 12 former employees (collectively, the "RIF"). Throughout this time, the Company carefully sought to balance the need to reduce costs with the need to maintain essential employees and operations. On account of the RIF, the Company incurred approximately \$1.2 million in compensation and personnel related expenses, including severance payouts for terminated employees.

51. The Company also undertook an extensive portfolio prioritization review in June 2023, determining to focus clinical development efforts on advancing avexitide in hyperinsulinemic hypoglycemia (HH) indications. As a result of the Company's decision to reprioritize its HDV Development Programs, the Company reduced its research and development expenses by approximately \$13 million as of December 31, 2023, consisting of a \$5 million decrease in milestone expenses related to the Lambda clinical studies under the License Agreement with Bristol, a \$3.5 million decrease in outside services across programs, including consulting and

advisory services, a \$3.3 million decrease in clinical and contract manufacturing expenses, and a \$1 million decrease in compensation and personnel related expenses.

C. Exploration of Strategic Alternatives.

52. Since its inception, the Company has incurred operating losses, resulting in tight cash constraints. The Company had a net loss of approximately \$75 million and \$96.8 million for the years ended December 31, 2023 and 2022, respectively. As of the Petition Date, the Company has approximately \$9.9 million of cash on hand. Developing product lines is an intrinsically resource-intensive process, and the Company has relied historically on the sale of equity securities and debt facilities to fund their operations. Notwithstanding the Company's cost-reduction efforts, because of the sustained operating losses, the Company recognized that additional financing was likely necessary to support ongoing development and commercialization.

53. Beginning in November 2023 and continuing into 2024, the Company and Propel Bio Management, LLC ("Propel"), one of its institutional shareholders, attempted to negotiate the terms of a potential investment, which would be used for the development of LNF for the treatment of HDV. Unfortunately, the investment proposal was not actionable, despite months of negotiation, and the Company was forced to pivot to alternative options—specifically, focusing on the ability to potentially consummate a sale of Zokinvy to bring in needed revenue for debt reduction and operations.

54. The Company has engaged with the Stalking Horse Purchaser over the past six months, in parallel with its financing efforts. Initially, the sale was intended to be consummated outside of Court, but, as the Company's circumstances evolved and, with the loss of the potential investment, the Company worked with the Stalking Horse Purchaser to pivot to an in-court transaction, as is further described in the Bid Procedures Motion.

55. The Bidding Procedures will allow the Company to market-test the assets and ensure that the Zokinvy Sale Transaction represents the highest and best value to all stakeholders.

D. Engagement with Prepetition Term Loan Lenders.

56. Throughout the Company's efforts to reduce costs and pursue strategic alternatives, the Company has engaged with the Prepetition Term Loan Lenders on next steps. Specifically, the Company provided the Prepetition Term Loan Lenders and their counsel with ongoing updates related to the status of the ongoing negotiations for both the potential investment and Zokinvy Sale Transaction.

57. Notwithstanding these efforts, on January 17, 2024, the Prepetition Term Loan Lenders delivered a notice (the "Default Notice") to the Company, stating that, under the Loan and Security Agreement, an Event of Default (as defined in the Loan and Security Agreement) had occurred due to a Material Adverse Change (as defined in the Loan and Security Agreement), without providing additional details. The Company disputes the allegation that a Material Adverse Change had occurred and saw no basis for delivery of the Default Notice.

58. The Company's counsel engaged with the Prepetition Term Loan Lenders' counsel (Bradley Arant Boult Cummings, LLP ("Bradley")) to understand the basis of the Default Notice, and, following those conversations, the Company, through Sidley, responded to Bradley, disputing the Material Adverse Change and Event of Default claims. Following further discussions among the Company's and Prepetition Term Loan Lenders' counsel, the Prepetition Term Loan Lenders voluntarily initially agreed to forbear from exercising remedies under the Loan and Security Agreement until February 2, 2024, and have since continued to issue voluntarily forbearances, currently through April 3, 2024.

E. Chapter 11 Filings and Next Steps.

59. The Debtors' ultimate goals in these Chapter 11 Cases are first, to ensure stability and continuity in the provision of life-saving drugs for progeria patients, including children, worldwide, and second, to consummate the Sale Transactions, thereby maximizing the value of the Debtors' estates for the benefit of all stakeholders.

60. The Debtors' immediate objective is to conduct these Chapter 11 Cases with as little disruption to operations as possible. I believe that, if the Court grants the relief requested in each of the First Day Motions, as discussed in more detail below, the prospect for achieving this objective and maximizing value for the benefit of all stakeholders will be substantially enhanced. Moreover, if the relief requested in the First Day Motions is not granted, the Debtors would suffer immediate and irreparable harm.

IV. FIRST DAY MOTIONS

61. In addition to the Bid Procedures Motion and contemporaneously herewith, the Debtors have filed a number of First Day Motions seeking orders granting various forms of relief intended to stabilize the Debtors' business operations, facilitate the efficient administration of these chapter 11 cases, and expedite a swift and smooth restructuring of the Debtors' balance sheet, including the following:

- *Debtors' Emergency Motion for Entry of an Order Directing Joint Administration of Chapter 11 Cases (the "Joint Administration Motion")*;
- *Debtors' Emergency Motion for Entry of an Order Extending Time to File Schedules of Assets and Liabilities and Statements of Financial Affairs (the "Schedules and SOFAs Motion")*;
- *Debtors' Emergency Application for Entry of an Order Authorizing the Retention and Employment of Kurtzman Carson Consultants LLC as Claims, Noticing and Solicitation Agent, Effective as of the Petition Date (the "KCC Retention Application")*;

- Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) File a Consolidated Creditor Matrix and (B) File a Consolidated List of 30 Largest Unsecured Creditors; (II) Waiving the Requirement to File a List of Equity Security Holders; (III) Authorizing the Debtors to Redact Certain Personally Identifying Information; and (IV) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11 Cases and Other Information (the "Creditor Matrix Motion");
- Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Continue Their Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto and (B) Renew, Supplement, and Enter Into New Insurance Policies, and (II) Granting Related Relief (the "Insurance Motion");
- Debtors' Emergency Motion for Entry of Interim And Final Orders (I) Authorizing the Debtors to Honor And Continue Certain Customer Programs and Customer Obligations in the Ordinary Course of Business, and (II) Authorizing Banks to Honor and Process Check an Electronic Transfer Requests Related Thereto (the "Customer Programs Motion");
- Debtors' Emergency Motion for Entry of an Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Services, and (III) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests (the "Utilities Motion");
- Debtors' Emergency Motion for Entry of an Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock (the "NOL Motion");
- Debtors' Emergency Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Certain Taxes and Fees (the "Taxes Motion");
- Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) 503(B)(9) Claimants, (B) Lien Claimants, (C) Critical Vendors, and (D) Foreign Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders (the "Critical Vendors Motion");
- Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, and Employee Benefits and (B) Continue the Postpetition Maintenance of Employee Benefit Programs, Policies, and Procedures in the Ordinary Course (the "Employee Wages Motion");
- Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts, (II) Honor Certain Obligations Relating Thereto; and (III) Granting a Waiver of Certain Deposit and Investment Requirements in 11 U.S.C. § 345(b) and the UST Guidelines (the "Cash Management Motion"); and

- *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; (III) Modifying Automatic Stay; (IV) Scheduling a Final Hearing (the "Cash Collateral Motion").*

62. Several of the First Day Motions request authority to pay certain prepetition claims.

I understand that Federal Rule of Bankruptcy Procedure 6003 provides, in relevant part, that the Court shall not consider motions to pay prepetition claims during the first 21 days following the filing of a chapter 11 petition, "except to the extent relief is necessary to avoid immediate and irreparable harm." In light of this requirement, the Debtors have narrowly tailored their requests for immediate authority to pay certain prepetition claims to those circumstances where the failure to pay such claims would cause immediate and irreparable harm to the Debtors and their estates. Other relief will be deferred for consideration at a later hearing.

63. I have consulted with my colleagues at the Company and the Debtors' advisors regarding the relief requested in the First Day Motions, and understand each of the First Day Motions and the relief requested therein. To the best of my knowledge and belief, the factual statements contained in each of the First Day Motions are true and accurate, and each such factual statement is incorporated herein by reference.

64. I believe that the relief requested in the First Day Motions is necessary, in the best interests of the Debtors' estates, their patients, their creditors, shareholders, and all other parties in interest, and will allow the Debtors to operate with minimal disruption and maximize value preservation during the pendency of these Chapter 11 Cases. I further believe that failure to grant the relief requested in any of the First Day Motions may result in immediate and irreparable harm to the Debtors, their businesses, and their estates. Accordingly, for the reasons set forth herein and in each respective First Day Motion, I believe that the Court should grant the relief requested in each of the First Day Motions.

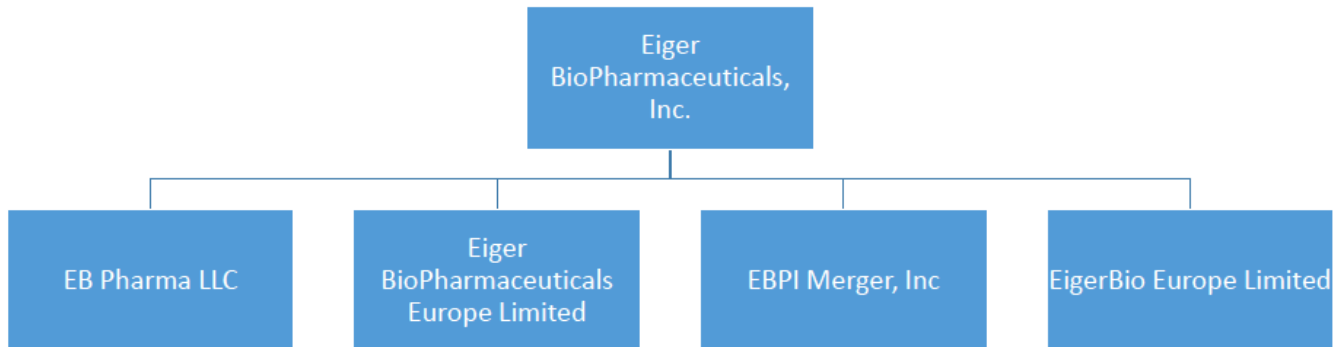
I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated this 1st day of April, 2024

/s/ David Apelian
David Apelian
Chief Executive Officer

EXHIBIT A

Organizational Chart



Eiger BioPharmaceuticals, Inc owns 100% of each subsidiary

Exhibit 5

Victor Bid Procedures Declaration

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

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

*Proposed Attorneys for the Debtors
and Debtors in Possession*

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

Related Docket No. 13

DECLARATION OF J. SCOTT VICTOR IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN 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 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

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.



Pursuant to 28 U.S.C. § 1746, I, J. Scott Victor, do hereby declare, under penalty of perjury, the following to the best of my information, knowledge, and belief:

1. I am a Managing Director at SSG Advisors, LLC (“SSG”), an investment banking firm that maintains offices at Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428, and I am duly authorized to make this declaration on behalf of SSG. I have over 40 years of experience in the restructuring industry and extensive experience: (i) marketing companies or their assets for sale, including experience marketing companies in distress and debtors in bankruptcy cases; (ii) raising capital for special situation transactions; and (iii) restructuring companies’ balance sheets both in court and out of court. SSG was engaged by the Debtors in March 2024 to aid in the effectuation of a marketing and sale process.

2. I am authorized to submit this declaration (the “Declaration”) on the Debtors’ behalf in support of the relief requested in the *Debtors’ Motion for Entry of an Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentyln Therapeutics, Inc. as the 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 (B) Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief* (the “Motion”).

3. Although SSG is being compensated for its work as proposed investment banker to the Debtors, I am not being compensated separately for this Declaration or any related testimony. Unless otherwise indicated herein, the statements in this Declaration are based on my personal

knowledge or my opinion based on my experience, on information that I received from the Debtors' employees and advisors, information that I have received from my colleagues at SSG working directly with me or under my supervision, direction, or control, or on my review of relevant documents. If I were called to testify, I could and would testify competently as set forth below.

Professional Background and Qualifications

4. I founded SSG in 2001. Prior to joining SSG, I was a partner and a senior member of the bankruptcy and restructuring department at Saul Ewing LLP

5. I hold a BA from the University of Pennsylvania, and a JD from the University of Miami School of Law. I have more than 40 years of restructuring experience, 17 years as a bankruptcy attorney and 24 years as a special situations investment banker. I am authorized to execute this declaration on behalf of SSG.

6. SSG is an independent boutique investment banking firm that assists middle market companies and their stakeholders in completing special situation transactions. SSG provides its clients with comprehensive investment banking services in the areas of mergers and acquisitions, private placements, financing restructurings, valuations, litigation and strategic advisory. Since its inception, SSG has completed over 400 investment banking assignments in North America across a variety of industries.

7. SSG's professionals have extensive experience working with financially distressed companies in and out of chapter 11, including through section 363 sales or a plan of reorganization. In particular, SSG has served as an investment banker for debtors and other parties in a number of bankruptcy cases in the Fifth Circuit, including, *inter alia*: *In re SanoTech360, LLC.*, Case No. 23-40261 (ELM), NDTX Fort Worth; *In re Soft Surroundings Holdings, LLC, et al.*, Case No: 23-

90769 (CML), SDTX Houston; *In re Watson Valve Services, Inc.*, Case No. 20-30968 (MI), SDTX Houston; *In re Papa Grande Gourmet Foods, LLC*, Case No. 19-50390 (RBK), WDTX San Antonio; *In re Francis' Drilling Fluids, LTD., et al.*, Case No. 18-35441 (MI), SDTX Houston; *In re American Fuel Cell and Coated Fabrics Company*, Case No. 17-44766 (MXM) NDTX Fort Worth; *In re A'GACI, LLC*, Case No. 18-50049 (RBK) WDTX San Antonio; *In re TPP ACQUISITION, INC. d/b/a The Picture People*, Case No. 16-33437 (HDH) NDTX Dallas; *In re Stone Panels, Inc.*, Case No. 16-32856 (HDH) NDTX Dallas; *In re Forest Park Medical Center at Fort Worth, LLC*, Case No. 16-40198 (RFN) NDTX Fort Worth; *In re Thinkstream Incorporated of Delaware*, Case No. 15-10553 (DDD) Middle District of Louisiana; *In re ITS Engineered Systems, Inc.*, Case No. 15-32145 (KKB) SDTX Houston; *In re One Source Industrial Holdings, LLC*, Case No. 14-44996 (RFN) NDTX Fort Worth; *In re: Color Star Growers of Colorado, Inc., et al.*, Case No. 13-42959 (BTR) EDTX Sherman. In addition, SSG has served as an investment banker for debtors and other parties in a number of biopharmaceutical bankruptcy cases including, *inter alia*: *In re ContraFect Corporation*, Case No. 23-11943 (LSS); *In re Gelesis Holdings, Inc., Gelesis, Inc. and Gelesis, LLC*, Case No. 23-11787 (BLS), 23-11788 (BLS), 23-11789 (BLS); *In re InVivo Therapeutics Corporations, et al.*, Case No. 24-10137 (MFW); *In re Infinity Pharmaceuticals, Inc.*, Case No. 23-11640 (BLS); *In re Allena Pharmaceuticals, Inc.*, Case No. 22-10842 (KBO); *In re Retrotope, Inc.*, Case No. 22-10228 (JTD); *In re Avadim Health, Inc.*, Case No. 21-10883 (CTG); *In re Argos Therapeutics, Inc.*, Case No. 18-12714 (KJC); *In re Cylex, Inc.*, Case No. 12-13259 (BLS).

SSG's Retention

8. Since SSG's engagement by the Debtors, I have worked closely with the Debtors' senior management and other retained professionals and have become knowledgeable about the

Debtors' business and financial affairs. SSG has undertaken significant efforts in both reviewing and analyzing the Debtors' businesses, operations, and financial projections and marketing the Debtors' assets for sale. To date, SSG has worked closely with the Debtors and their professionals to: (i) identify and evaluate potential counterparties for a potential sale process; (ii) prepare a marketing plan and information materials describing the Debtors to distribute to potential buyers on a confidential basis; (iii) assist the Debtors in contacting potential buyers, arranging meetings with such parties, and coordinating the due diligence investigation of the Debtors; (iv) develop a strategy to effectuate both a sale of the Zokinvy Assets (defined below) and a sale or sale(s) of the Remaining Assets (defined below) (the "Sale Transaction(s)"); (v) structure and negotiate a potential Sale Transaction(s) and the related logistics surrounding a potential Sale Transaction(s); and (vi) assist the Debtors with the coordination of a data room and due diligence efforts.

9. SSG has worked with the Debtors and their other professionals to expeditiously collect, review, and organize diligence materials for inclusion in a virtual data room, access to which will be provided to interested parties that execute an appropriate nondisclosure agreement. SSG has also worked with the Debtors and their other professionals to draft marketing materials which reflect the Debtors' current and projected operations to facilitate counterparty diligence.

The Debtors' Prepetition Sale and Marketing Efforts

10. As set forth more fully in the First Day Declaration, Eiger BioPharmaceuticals, Inc. ("Eiger") is a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. All of the Debtors' rare disease programs have FDA Breakthrough Therapy designation.

11. In late 2023, and prior to SSG's engagement, the Debtors received indications of interest regarding a purchase of the Zokinvy assets (the "Zokinvy Assets") from numerous

interested parties, one of whom was Sentyln Therapeutics, Inc (“Sentyln”). The Debtors ultimately determined to move forward with Sentyln as a potential purchaser for the Zokinvy Assets because the Debtors believed in their business judgment that Sentyln provided the best value for the Zokinvy Assets in light of the proposed purchase price and certainty of closing. The Debtors began negotiating a purchase agreement to consummate the sale transaction for the Zokinvy Assets (the “Zokinvy Sale Transaction”) in October 2023.

12. It is my understanding that the Zokinvy Sale Transaction was initially intended to be consummated outside of Court, but, as the Debtors’ circumstances evolved, the Company worked with Sentyln to pivot the existing documentation to an in-court transaction. After discussions with other potential purchasers and engaging with their key stakeholders, the Debtors, in an exercise of their business judgment, named Sentyln as stalking horse bidder for the Zokinvy Assets (the “Zokinvy Stalking Horse Purchaser”), on the terms and subject to the conditions more fully described under the Zokinvy Stalking Horse APA attached to the Motion as Exhibit 2 (the “Zokinvy Stalking Horse Bid”). The Zokinvy Stalking Horse Bid includes a purchase price of \$26 million if the Zokinvy Sale Transaction closes (the “Closing”) no later than April 24, 2024, provided, however, that the purchase price will decrease by a *per diem* amount equal to \$214,285.71 for every day after April 24, 2024 that Closing does not occur. Through negotiations with between the Debtor and Sentyln, the Zokinvy Stalking Horse Bid encompasses a minimum purchase price of \$20 million, provided that the Zokinvy Sale Transaction closes no later than May 31, 2024. A purchase price deduction is related to the Zokinvy Asset’s revenue generating capability and, as time passes, that is revenue the ultimate purchaser would not recoup through the purchase. The Zokinvy Stalking Horse Bid is subject to higher and better offers through the proposed bid procedures, discussed below.

13. The Debtors engaged SSG, as investment banker, to assist in marketing the Debtors' assets and soliciting potential purchasers. SSG will also assist to identify any additional potential purchasers for the Zokinvy Assets to ensure the Zokinvy Stalking Horse Bid maximizes the value available for all stakeholders.

14. Based on our diligence and conversations with the Debtors and their advisors, I believe that the prepetition engagement with other interested parties appropriately identified potential bidders for the Zokinvy Assets and that, at this juncture, given the limited number of potential purchases, entry into the Zokinvy Stalking Horse Bid presents the best means to achieve the best available value of the Debtors' estates for all stakeholders. In order to fully maximize value and find the highest and best offer for the Zokinvy Assets, SSG will engage with additional potential bidders related to the Zokinvy Assets, and will continue to do so until the Zokinvy Sale Transaction is approved by this Court.

The Bid Procedures and Sale Transactions Timelines

15. I have reviewed the Bid Procedures (defined below) and I believe that the Bid Procedures, if approved, will facilitate an orderly, competitive, and efficient bidding and auction process in a fair and transparent manner for the Zokinvy Assets and for all the Debtors' remaining assets (the "Remaining Assets"). The proposed Bid Procedures contemplate an open auction process for the Zokinvy Assets (the "Zokinvy Auction") and for the Remaining Assets (the "Remaining Assets Auction(s)") with appropriate requirements to submit a qualified bid and provide potential bidders with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

16. Although the Zokinvy Auction is set for sixteen (16) days following the Petition Date, it is my understanding based on diligence I have reviewed and conversations I have had with

the Debtors, that the Debtors were engaged with potential bidders well in advance of these chapter 11 cases, with potential bidders completing various levels of diligence. Additionally, the universe of potential bidders is small for the Zokinvy Assets and thus the timeline proposed appropriately balances maximizing aggregate value for the Zokinvy Assets and minimizing the length of time before the Zokinvy Sale Transaction may close.

17. The Remaining Assets Auction(s), on the other hand, provides potential bidders additional time to perform due diligence and acquire information as there was not a prepetition marketing process related to those Remaining Assets. The additional time contemplated for the Remaining Assets Auction(s) is an acknowledgment of the distinct prepetition marketing and diligence processes undertaken related to the Remaining Assets versus the Zokinvy Assets.

18. I believe the processes through which potential buyers will perform due diligence on all of the Debtors' assets, including the Zokinvy Assets and the Remaining Assets, and submit bids, will increase the likelihood that the Debtors will obtain the best available value for the Debtors' Zokinvy Assets at the Zokinvy Auction, and for the Remaining Assets at the Remaining Assets Auction(s).

19. As set forth in the Motion, the Debtors are seeking approval of the Bid Procedures to run two separate sale processes on two separate timelines, to ensure a clear and transparent process for the solicitation, receipt, and evaluation of bids, including bids for the sale of the Zokinvy Assets and bids for the sale of the Remaining Assets, on court-approved timelines, that allow the Debtors to timely consummate a sale of the Zokinvy Assets and a sale or sale(s) of the Remaining Assets.

20. I have reviewed the procedures contained within the Motion (the "Bid Procedures"). Generally speaking, the Bid Procedures establish, among other things:

- a. a robust due diligence process for potential bidders as it relates to the sale or sale(s) of Remaining Assets;
- b. the deadlines and requirements for both the sale of the Zokinvy Assets and the Remaining Assets for submitting Bids and the methods and criteria by which such Bids will be deemed to be Qualified Bids sufficient to trigger an auction, including the terms and conditions that must be satisfied and the deadlines that must be met by any bidder of either the Zokinvy Assets or the Remaining Assets to be considered a Qualified Bidder and to participate in the auction;
- c. the Debtors' authority to designate a Stalking Horse Purchaser solely for the Zokinvy Assets, and, subject to Court approval, to seek Zokinvy Bid Protections for the Zokinvy Stalking Horse Bid;
- d. the manner in which Qualified Bids will be evaluated by the Debtors in both the sale of the Zokinvy Assets and sale or sale(s) of the Remaining Assets;
- e. the conditions for holding each auction and procedures for each auction, if any; and
- f. various other matters relating to the sales and marketing process generally, including the designation of one or more Backup Bids.

21. The Bid Procedures include a deadline for interested parties to formulate and submit a bid to purchase some or all of the Zokinvy Assets on April 15, 2024 (the "Zokinvy Bid Deadline"). Although the Zokinvy Bid Deadline is relatively short, I believe the fast sale process provides for an effective sale process for the Zokinvy Assets while also ensuring that the Debtors receive maximum value from the Zokinvy Stalking Horse Purchaser if it is the successful bidder, thereby providing the Debtors with the best opportunity to maximize profits from the Zokinvy Assets and to maximize recoveries for all of the Debtors' stakeholders.

22. Additionally, the Bid Procedures include a deadline for interested parties to formulate and submit a bid(s) to purchase some or all of the Remaining Assets (the “Remaining Assets Bid Deadline”). The proposed timeline for the Remaining Assets provides parties with approximately ten (10) weeks to review diligence, engage with the Debtors, and formulate their bid proposals. I feel this provides more than enough time to evaluate the Remaining Assets and also allows the Debtors to move quickly and efficiently through the sale process. I therefore believe the proposed timeline for the sale of the Remaining Assets and other features of the Bid Procedures governing the sale, marketing, and auction process are fair, reasonable, appropriate, and in the best interest of the Debtors’ estates under these circumstances.

23. Specifically, the Bid Procedures propose the following key dates and deadlines for the sale of the Zokinvy Assets:

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 + 2 (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
Initial Zokinvy Cure Notice Deadline	P + 11 (April 12, 2024) at 4:00 pm
Zokinvy Bid Deadline ²	P + 14 (April 15, 2024) at 4:00 pm
Zokinvy Sale Objection Deadline	P + 15 (April 16, 2024) at 4:00 pm
Zokinvy Cure Objection Deadline	P + 15 (April 16, 2024) at 4:00 pm
Determination of Zokinvy Qualified Bids	As soon as reasonably practicable following the Bid Deadline
Zokinvy Auction (if necessary)	P + 16 (April 17, 2024) at 9:00 am
Deadline to File Notice of Zokinvy Winning Bid	As soon as reasonably practicable following the Auction
Post-Zokinvy Auction Objection Deadline	P + 19 (April 20, 2024) at 4:00 pm

² The Debtors reserve their right, in their own discretion, to move the deadline for the submission of qualified bids.

ZOKINVY SALE TRANSACTION MILESTONES	
EVENT OR DEADLINE	DATE AND TIME (ALL IN PREVAILING CENTRAL TIME)
Zokinvy Sale Hearing	P + 21 (April 22, 2024) (subject to the Court's availability)
Anticipated Zokinvy Closing Date	P + 23 (April 24, 2024)

24. Additionally, the Debtors have proposed a more elongated schedule for the sale or sale(s) of the Remaining Assets as such assets have not been subject to the same level of interest and marketing prepetition as the Zokinvy Assets. Accordingly, the below timeline sets out the proposed Bid Procedures, and marketing and bid process for the Remaining Assets:

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 + 2 (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 + 64 (June 4, 2024) at 4:00 p.m.
Remaining Sale Transaction(s) Bid Deadline ³	P + 70 (June 10, 2024) at 4:00 pm
Remaining Sale Transaction(s) Objection Deadline	P + 72 (June 12, 2024) at 4:00 pm
Remaining Sale Transaction(s) Cure Objection Deadline	P + 72 (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 + 74 (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 + 78 (June 18, 2024) at 4:00 pm

³ 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) Hearing	P + 80 (June 20, 2024) (subject to the Court's availability)
Anticipated Remaining Sale Transaction(s) Closing Date	P + 91 (July 1, 2024)

25. I believe that the Bid Procedures, including both the Zokinvy Sale Transaction and the Remaining Asset Sale Transaction(s) timelines described above, are designed to facilitate a transparent, robust, and efficient sales and marketing processes. As described in the Motion, the proposed Zokinvy Bid Deadline is April 15, 2024 and the Remaining Assets Bid Deadline is June 10, 2024. The expedited postpetition marketing and bid process for the Zokinvy Assets takes into account the fact that the Debtors have received offers for the Zokinvy Assets prior to these chapter 11 cases and that the Debtors entered into the Zokinvy Stalking Horse APA with the Zokinvy Stalking Horse Purchaser to establish a floor for the purchase price of the Zokinvy Assets. In contrast, the more fulsome postpetition marketing process to be ran for the Remaining Assets will allow any and all potential interested parties to evaluate the Remaining Assets and submit a bid on a more extended timeline.

26. Given the process conducted by the Debtors, prior to SSG's engagement, to date for the Zokinvy Assets and the fulsome marketing process that will take place for the Remaining Assets during these chapter 11 cases by SSG, the potential publicity surrounding these chapter 11 cases, and the two timelines proposed by the Debtors, it is my view, based on my experience and in light of the circumstances, that the Bid Procedures are reasonable and appropriate under the circumstances for each separate process. The Bid Procedures seek to balance the Debtors' interests in consummating the Sale Transaction for the Zokinvy Assets on an expedited timeline, while

running a more robust and fulsome sale process for the Remaining Assets, all while seeking to attract the best available offers in an effort to facilitate value maximizing transactions.

The Zokinvy Stalking Horse Bid

27. The Debtors, in an exercise of their business judgment, determined that the Zokinvy Stalking Horse Bid, as more fully described in the Zokinvy Stalking Horse APA, provided substantial value to the estates and that the Zokinvy Stalking Horse Purchaser was prepared to expeditiously execute definitive documentation to consummate the Zokinvy Sale Transaction, subject to higher or otherwise better offers at the Zokinvy Auction. Specifically, Debtors previously engaged with Progeria Research Foundation (“PRF”), a patient advocacy group with consent rights over any sublicense, sale or transfer of the Zokinvy Assets, to negotiate terms for PRF’s potential consent to Sentyln’s purchase of the Zokinvy Assets. I understand from the Debtors that these discussions, which included meetings between PRF and Sentyln, took considerable time and effort. It is also my understanding from the Debtors that PRF advised Eiger that Sentyln would be a suitable buyer of the Zokinvy Assets, subject to the negotiation of definitive agreements.

28. Negotiations between Zokinvy Stalking Horse Purchaser and the Debtors in connection with the Zokinvy Stalking Horse APA and the restructuring transactions more broadly have included extensive arms’-length negotiations between the Zokinvy Stalking Horse Purchaser and the Debtors and their advisors on economic and legal terms. Following arms’-length and good faith negotiations, the Debtors and the Zokinvy Stalking Horse Purchaser have agreed in principal on the Zokinvy Stalking Horse APA for the purchase of the Zokinvy Assets. The Zokinvy Stalking Horse APA establishes a baseline bid in connection with the Bid Procedures. Entry into the Zokinvy Stalking Horse APA is designed to incentivize potential bidders and thereby elicit the

best available bid of these assets for the benefit of the Debtors' estates and their various stakeholders.

29. In accordance with the Bid Procedures, and in advance of any applicable Zokinvy Auction, the Debtors, with the assistance of SSG, will continue to solicit higher or otherwise better proposals from third parties. The Zokinvy Stalking Horse Bid sets the "floor" price for the Zokinvy Assets, which sell seek promote active bidding from other seriously interested parties and to elicit the best offers available for such assets.

Material Terms of the Zokinvy Stalking Horse APA

30. Based on my review of the negotiations and proposals received to date, the purchase price for the Zokinvy Assets in the Zokinvy Stalking Horse APA is the result of extensive, good-faith, arm's-length negotiations, and is currently the best available proposal as pre-approval from the licensors has been obtained for this transaction. I believe that entering into the Zokinvy Stalking Horse APA is in the best interest of the Debtors' estates. I further believe that the terms of the Zokinvy Stalking Horse APA establish a baseline bid for the Zokinvy Assets that, along with the Bid Procedures, enables the Debtors to drive the best available purchase price for the Zokinvy Assets and allows time for the licensors to approve competing bids.

The Zokinvy Bid Protections

31. As set forth above, the Zokinvy Stalking Horse APA contemplates bid protections (the "Zokinvy Bid Protections") including (a) a provision for expense reimbursement (the "Expense Reimbursement") not to exceed \$600,000 following the termination of the Zokinvy Stalking Horse APA under certain circumstances, and (ii) a break-up fee (the "Break-Up Fee") which equals \$780,000 (calculated as three percent (3.0%) of the initially proposed Purchase Price of \$26,000,000), payable in the event that the Zokinvy Stalking Horse APA is terminated under

certain circumstances and the Debtors consummate an alternative transaction. The Break-Up Fee and Expense Reimbursement are necessary to successfully pursue the sale of the Zokinvy Assets and will not chill bidding in my view. The Zokinvy Stalking Horse Bid sets a floor for the value of such assets, encouraging potential buyers to meet or exceed such floor price for the assets and potentially increasing the realizable value of the assets to the benefit of all parties in interest.

32. The payment of the Zokinvy Bid Protections will not diminish the Debtors' estates to the extent they become payable because any competing bid must exceed the Zokinvy Stalking Horse Bid by an amount in excess of the Break-Up Fee and the Expense Reimbursement. It is my understanding that absent the Debtors' commitment to the Break-Up Fee and the Expense Reimbursement, the Debtors could lose the opportunity to obtain the best available offer for the Zokinvy Assets and would lose all downside protections offered by the existence of the Zokinvy Stalking Horse Bid. Based on my review of the Debtors' prepetition marketing process and the arms'-length negotiations between the Debtors and the Zokinvy Stalking Horse Purchaser, I believe that the Debtors have appropriately determined that Zokinvy Bid Protections are necessary to retain the Zokinvy Stalking Horse Purchaser's commitment to the consummation of the Sale Transaction. I believe that the Zokinvy Bid Protections, as a whole, are comparable to the bid protections often provided to the bidders in bankruptcy cases.

33. Executing the Zokinvy Stalking Horse APA has put the Debtors in a position to solicit competing bids that may be materially higher or may provide otherwise better value to the Debtors' estates than the Zokinvy Stalking Horse Bid. Accordingly, based on my review of the Zokinvy Stalking Horse APA and given the limited number of interested parties in the Zokinvy Assets, I believe that the benefits of the Zokinvy Stalking Horse APA outweigh the costs associated with the Zokinvy Bid Protections.

34. In light of the circumstances and in the context of the proposed Zokinvy Sale Transaction, I believe that the selection of the Zokinvy Stalking Horse Bid may result in the submission of additional offers for the Zokinvy Assets at higher values than would be received without the Zokinvy Stalking Horse Purchaser, and consequently, is the likely the best method to increase the available value of the Zokinvy Assets and produce a value maximizing sale transaction.

Conclusion

35. Accordingly, for all the foregoing reasons, I believe that the Bid Procedures, both the sale timeline for the Zokinvy Assets and the sale timeline for the Remaining Assets set forth herein, the approval of the Zokinvy Stalking Horse Bid and the Zokinvy Bid Protections: (a) are consistent with sales and marketing timelines for businesses of similar size and complexity; (b) will allow for an efficient sale of the Zokinvy Assets and a fulsome marketing process of the Remaining Assets; (c) are reasonable and appropriate under the circumstances; and (d) will result in a value maximizing outcome for the Debtors.

[Remainder of page intentionally left blank.]

I declare under penalty of perjury that, after reasonable inquiry, the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 1st day of April, 2024

/s/ J. Scott Victor
By: J. Scott Victor
Managing Director

Exhibit 6

Apelian Bid Procedures Declaration

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

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

*Proposed Attorneys for the Debtors
and Debtors in Possession*

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

In re:	Chapter 11
EIGER BIOPHARMACEUTICALS, INC., <i>et al.</i> ¹	Case No. 24-80040 (SGJ)
Debtors.	(Joint Administration Requested)
	Related Docket Nos. 13 and 25

**DECLARATION OF DAVID APELIAN
IN SUPPORT OF THE DEBTORS' MOTION FOR ENTRY OF AN 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 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**

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.



Pursuant to 28 U.S.C. § 1746, I, David Apelian, do hereby declare, under penalty of perjury, the following to the best of my information, knowledge, and belief:

1. I am the Chief Executive Officer at Debtor Eiger BioPharmaceuticals, Inc. (“Eiger”), that has its principal office at 2155 Park Boulevard, Palo Alto, California 94036. I served as Interim CEO from December 2022 to June 2023, have served as CEO since June 2023, and I worked at Eiger for approximately five (5) years prior to my appointment as Interim CEO, and have served as a member of the Board of Directors of Eiger since June 2017.

2. I am authorized to submit this declaration (the “Declaration”) on the Debtors’ behalf in support of the relief requested in the *Debtors’ Motion for Entry of an Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentyln Therapeutics, Inc. as the 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 (B) Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief* (the “Motion”).

3. Although I receive compensation as an employee of Eiger, I am not being compensated separately for this Declaration or any related testimony. Unless otherwise indicated herein, the statements in this Declaration are based on my personal knowledge or my opinion based on my experience, on information that I received from the Debtors’ employees and advisors, information that I have received from my colleagues at Eiger working directly with me or under

my supervision, direction, or control, or on my review of relevant documents. If I were called to testify, I could and would testify competently as set forth below.

Professional Background and Qualifications

4. I joined Eiger in June 2017. I am based in Eiger’s principal office, located at 2155 Park Boulevard, Palo Alto, California 94036 and have over 25 years of clinical development and regulatory experience relating to pharmaceutical products, serving in numerous leadership roles throughout this time for various companies. Prior to rejoining Eiger as Interim CEO in December 2022, I was CEO at BlueSphere Bio.

5. Through my almost seven years at Eiger, I have developed intimate knowledge about the Debtors’ business and financial affairs.

6. I have a BA from Rutgers University–New Brunswick, a PhD in Biochemistry and Molecular Biology from Rutgers University–New Brunswick, an M.D. from the University of Medicine and Dentistry of New Jersey–New Jersey Medical School, and an MBA from Quinnipiac University–School of Business. I am authorized to execute this declaration on behalf of Eiger.

The Debtors’ Prepetition Sale and Marketing Efforts

7. As set forth more fully in the First Day Declaration, Eiger is a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. All of the Debtors’ rare disease programs have FDA Breakthrough Therapy designation.

8. In late 2023, the Debtors received indications of interest regarding a purchase of the Zokinvy assets (the “Zokinvy Assets”) from numerous interested parties, one of which was Sentynl Therapeutics, Inc (“Sentynl”). The Debtors ultimately determined to move forward with Sentynl as a potential purchaser for the Zokinvy Assets because Sentynl provided the best value

for the Zokinvy Assets in light of the proposed purchase price and certainty of closing. The Debtors began negotiating a purchase agreement to consummate the sale transaction for the Zokinvy Assets (the “Zokinvy Sale Transaction”) in October 2023.

9. Initially, the Zokinvy Sale Transaction was intended to be consummated outside of Court, but, as the Debtors’ circumstances evolved, including the fact that on March 22, 2024 Merck notified Eiger that it was unwilling to provide consent to the Zokinvy Sale Transaction in advance of a bankruptcy filing, the Company worked with Sentynl to pivot the existing documentation to an in-court transaction. After discussions with other potential purchasers and engaging with their key stakeholders and advisors, the Debtors, in an exercise of their business judgment, named Sentynl as stalking horse bidder for the Zokinvy Assets (the “Zokinvy Stalking Horse Purchaser”), on the terms and subject to the conditions more fully described under the Zokinvy Stalking Horse APA attached to the Motion as Exhibit 2 (the “Zokinvy Stalking Horse Bid”). The Zokinvy Stalking Horse Bid includes a purchase price of \$26 million if the Zokinvy Sale Transaction closes (the “Closing”) no later than April 24, 2024. The purchase price will decrease by a *per diem* amount equal to \$214,285.71 for every day after April 24, 2024 that Closing does not occur. Through negotiations with Sentynl, the Zokinvy Stalking Horse Bid encompasses a minimum purchase price of \$20 million, provided that the Zokinvy Sale Transaction closes no later than May 31, 2024. A purchase price deduction is related to the Zokinvy Asset’s revenue generating capability and exclusivities and, as time passes, that is revenue the ultimate purchaser would not recoup through the Zokinvy Sale Transaction. The Zokinvy Stalking Horse Bid is subject to higher and better offers through the proposed bid procedures, discussed below.

10. The Debtors have engaged SSG Advisors, LLC (“SSG”), as investment banker, to assist in marketing the Debtors’ assets and soliciting potential purchasers. SSG will also assist to

identify any additional potential purchasers for the Zokinvy Assets to ensure the Zokinvy Stalking Horse Bid maximizes the value available for all stakeholders.

11. I believe that the prepetition engagement with other interested parties appropriately identified potential bidders for the Zokinvy Assets and that, at this juncture, entry into the Zokinvy Stalking Horse Bid presents the best means to achieve the best available value of the Debtors' estates for all stakeholders. Further, SSG continues to engage with additional potential bidders related to the Zokinvy Assets, and will continue to do so until the Zokinvy Sale Transaction is approved by this Court.

The Bid Procedures and Sale Transactions Timelines

12. I have reviewed the Bid Procedures (defined below) and I believe that the Bid Procedures, if approved, will facilitate an orderly, competitive, and efficient bidding and auction process in a fair and transparent manner for the Zokinvy Assets and for all the Debtors' remaining assets (the "Remaining Assets"). The proposed Bid Procedures contemplate an open auction process for the Zokinvy Assets (the "Zokinvy Auction") and for the Remaining Assets (the "Remaining Assets Auction(s)") with appropriate requirements to submit a qualified bid and provide potential bidders with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

13. Although the Zokinvy Auction is set for sixteen (16) days following the Petition Date, the Debtors were engaged with potential bidders well in advance of these chapter 11 cases, with potential bidders completing various levels of diligence. I have been informed by SSG that the universe of potential bidders is small for the Zokinvy Assets and that the timeline proposed appropriately balances maximizing aggregate value for the Zokinvy Assets and minimizing the length of time before the Zokinvy Sale Transaction may close.

14. The Remaining Assets Auction(s), on the other hand, provides potential bidders additional time to perform due diligence and acquire information as there was not a prepetition marketing process related to those Remaining Assets. The additional time contemplated for the Remaining Assets Auction(s) is an acknowledgment of the distinct prepetition marketing and diligence processes undertaken related to the Remaining Assets versus the Zokinvy Assets.

15. I believe the processes through which potential buyers will perform due diligence on all of the Debtors' assets, including the Zokinvy Assets and the Remaining Assets, and submit bids, will increase the likelihood that the Debtors will obtain the best available value for the Debtors' Zokinvy Assets at the Zokinvy Auction, and for the Remaining Assets at the Remaining Assets Auction(s).

16. As set forth in the Motion, the Debtors are seeking approval of the Bid Procedures to run two separate sale processes on two separate timelines, to ensure a clear and transparent process for the solicitation, receipt, and evaluation of bids, including bids for the sale of the Zokinvy Assets and bids for the sale of the Remaining Assets, on court-approved timelines, that allow the Debtors to timely consummate a sale of the Zokinvy Assets and a sale or sale(s) of the Remaining Assets.

17. I have reviewed the procedures contained within the Motion (the "Bid Procedures"). Generally speaking, the Bid Procedures establish, among other things:

- a. a robust due diligence process for potential bidders as it relates to the sale or sale(s) of Remaining Assets;
- b. the deadlines and requirements for both the sale of the Zokinvy Assets and the Remaining Assets for submitting Bids and the methods and criteria by which such Bids will be deemed to be Qualified Bids sufficient to trigger an auction, including the terms

- and conditions that must be satisfied and the deadlines that must be met by any bidder of either the Zokinvy Assets or the Remaining Assets to be considered a Qualified Bidder and to participate in the auction;
- c. the Debtors' authority to designate a Stalking Horse Purchaser solely for the Zokinvy Assets, and, subject to Court approval, to seek Zokinvy Bid Protections for the Zokinvy Stalking Horse Bid;
 - d. the manner in which Qualified Bids will be evaluated by the Debtors in both the sale of the Zokinvy Assets and sale or sale(s) of the Remaining Assets;
 - e. the conditions for holding each auction and procedures for each auction, if any; and
 - f. various other matters relating to the sales and marketing process generally, including the designation of one or more Backup Bids.

18. The Bid Procedures include a deadline for interested parties to formulate and submit a bid to purchase some or all of the Zokinvy Assets on April 15, 2024 (the "Zokinvy Bid Deadline"). Although the Zokinvy Bid Deadline is relatively short, I believe the fast sale process provides for an effective sale process for the Zokinvy Assets while also ensuring that the Debtors receive maximum value from the Zokinvy Stalking Horse Purchaser if it is the successful bidder, thereby providing the Debtors with the best opportunity to maximize profits from the Zokinvy Assets and to maximize recoveries for all of the Debtors' stakeholders.

19. Additionally, the Bid Procedures include a deadline for interested parties to formulate and submit a bid(s) to purchase some or all of the Remaining Assets (the "Remaining Assets Bid Deadline"). The proposed timeline for the Remaining Assets provides parties with approximately ten (10) weeks to review diligence, engage with the Debtors, and formulate their bid proposals. I feel this provides more than enough time to evaluate the Remaining Assets and

also allows the Debtors to move quickly and efficiently through the sale process. I therefore believe the proposed timeline for the sale of the Remaining Assets and other features of the Bid Procedures governing the sale, marketing, and auction process are fair, reasonable, appropriate, and in the best interest of the Debtors’ estates under these circumstances.

20. Specifically, the Bid Procedures propose the following key dates and deadlines for the sale of the Zokinvy Assets:

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 + 2 (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
Initial Zokinvy Cure Notice Deadline	P + 11 (April 12, 2024) at 4:00 pm
Zokinvy Bid Deadline ²	P + 14 (April 15, 2024) at 4:00 pm
Zokinvy Sale Objection Deadline	P + 15 (April 16, 2024) at 4:00 pm
Zokinvy Cure Objection Deadline	P + 15 (April 16, 2024) at 4:00 pm
Determination of Zokinvy Qualified Bids	As soon as reasonably practicable following the Bid Deadline
Zokinvy Auction (if necessary)	P + 16 (April 17, 2024) at 9:00 am
Deadline to File Notice of Zokinvy Winning Bid	As soon as reasonably practicable following the Auction
Post-Zokinvy Auction Objection Deadline	P + 19 (April 20, 2024) at 4:00 pm
Zokinvy Sale Hearing	P + 21 (April 22, 2024) (subject to the Court’s availability)
Anticipated Zokinvy Closing Date	P + 23 (April 24, 2024)

21. Additionally, the Debtors have proposed a more elongated schedule for the sale or sale(s) of the Remaining Assets as such assets have not been subject to the same level of interest

² The Debtors reserve their right, in their own discretion, to move the deadline for the submission of qualified bids.

and marketing prepetition as the Zokinvy Assets. Accordingly, the below timeline sets out the proposed Bid Procedures, and marketing and bid process for the Remaining Assets:

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 + 2 (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 + 64 (June 4, 2024) at 4:00 p.m.
Remaining Sale Transaction(s) Bid Deadline ³	P + 70 (June 10, 2024) at 4:00 pm
Remaining Sale Transaction(s) Objection Deadline	P + 72 (June 12, 2024) at 4:00 pm
Remaining Sale Transaction(s) Cure Objection Deadline	P + 72 (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 + 74 (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 + 78 (June 18, 2024) at 4:00 pm
Remaining Sale Transaction(s) Hearing	P + 80 (June 20, 2024) (subject to the Court's availability)
Anticipated Remaining Sale Transaction(s) Closing Date	P + 91 (July 1, 2024)

22. I believe that the Bid Procedures, including both the Zokinvy Sale Transaction and the Remaining Asset Sale Transaction(s) timelines described above, are designed to facilitate a transparent, robust, and efficient sales and marketing processes. As described in the Motion, the proposed Zokinvy Bid Deadline is April 15, 2024 and the Remaining Assets Bid Deadline is June

³ The Debtors reserve their right, in their own discretion, to move the deadline for the submission of qualified bids.

10, 2024. The expedited postpetition marketing and bid process for the Zokinvy Assets takes into account the fact that the Debtors have received offers for the Zokinvy Assets prior to these chapter 11 cases and that the Debtors entered into the Zokinvy Stalking Horse APA with the Zokinvy Stalking Horse Purchaser to establish a floor for the purchase price of the Zokinvy Assets. In contrast, the more fulsome postpetition marketing process to be ran for the Remaining Assets will allow any and all potential interested parties to evaluate the Remaining Assets and submit a bid on a more extended timeline.

23. Given the process conducted to date for the Zokinvy Assets and the fulsome marketing process that will take place for the Remaining Assets during these chapter 11 cases by SSG, the potential publicity surrounding these chapter 11 cases, and the two timelines proposed by the Debtors, it is my view, based on my experience over the last six months, and in light of the circumstances, that the Bid Procedures are reasonable and appropriate under the circumstances for each separate process. The Bid Procedures seek to balance the Debtors' interests in consummating the Sale Transaction for the Zokinvy Assets on an expedited timeline, while running a more robust and fulsome sale process for the Remaining Assets, all while seeking to attract the best available offers in an effort to facilitate value maximizing transactions.

The Zokinvy Stalking Horse Bid

24. The Debtors, in an exercise of their business judgment, determined that the Zokinvy Stalking Horse Bid, as more fully described in the Zokinvy Stalking Horse APA, provided substantial value to the estates and that the Zokinvy Stalking Horse Purchaser was prepared to expeditiously execute definitive documentation to consummate the Zokinvy Sale Transaction, subject to higher or otherwise better offers at the Zokinvy Auction. Specifically, Debtors previously engaged with Progeria Research Foundation ("PRF"), a patient advocacy group with

consent rights over any sublicense, sale or transfer of the Zokinvy Assets, to negotiate terms for PRF's potential consent to Sentyln's purchase of the Zokinvy Assets. These discussions, which included meetings between PRF and Sentyln, took considerable time and effort. PRF advised Eiger that Sentyln would be a suitable buyer of the Zokinvy Assets, subject to the negotiation of definitive agreements. Further, I understand from Eiger's advisors that the Zokinvy Stalking Horse Purchaser is in a stronger financial position and ability to fund and close the Zokinvy Sale Transaction compared to other interested parties at this time.

25. Negotiations in connection with the Zokinvy Stalking Horse APA and the restructuring transactions more broadly have included extensive arms'-length negotiations between the Zokinvy Stalking Horse Purchaser and the Debtors and their advisors on economic and legal terms. Following arms'-length and good faith negotiations, the Debtors and the Zokinvy Stalking Horse Purchaser have agreed in principal on the Zokinvy Stalking Horse APA for the purchase of the Zokinvy Assets. The Zokinvy Stalking Horse APA establishing a baseline bid in connection with the Bid Procedures. Entry into the Zokinvy Stalking Horse APA is designed to incentivize potential bidders and thereby elicit the best available bid of these assets for the benefit of the Debtors' estates and their various stakeholders.

26. In accordance with the Bid Procedures, and in advance of any applicable Zokinvy Auction, the Debtors, with the assistance of SSG, will continue to solicit higher or otherwise better proposals from third parties. The Zokinvy Stalking Horse Bid sets the "floor" price for the Zokinvy Assets, which sell seek promote active bidding from other seriously interested parties and to elicit the best offers available for such assets.

Material Terms of the Zokinvy Stalking Horse APA

27. Based on my review of the negotiations and proposals received to date, the purchase price for the Zokinvy Assets in the Zokinvy Stalking Horse APA is the result of extensive, good-faith, arm's-length negotiations, and is currently the best available proposal. I believe that entering into the Zokinvy Stalking Horse APA is in the best interest of the Debtors' estates. I further believe that the terms of the Zokinvy Stalking Horse APA establish a baseline bid for the Zokinvy Assets that, along with the Bid Procedures, enables the Debtors to drive the best available purchase price for the Zokinvy Assets.

The Zokinvy Bid Protections

28. As set forth above, the Zokinvy Stalking Horse APA contemplates bid protections (the "Zokinvy Bid Protections") including (a) a provision for expense reimbursement (the "Expense Reimbursement") not to exceed \$600,000 following the termination of the Zokinvy Stalking Horse APA under certain circumstances, and (ii) a break-up fee (the "Break-Up Fee") which equals \$780,000 (calculated as three percent (3.0%) of the initially proposed Purchase Price of \$26,000,000), payable in the event that the Zokinvy Stalking Horse APA is terminated under certain circumstances and the Debtors consummate an alternative transaction. The Break-Up Fee and Expense Reimbursement are necessary to successfully pursue the sale of the Zokinvy Assets and will not chill bidding. The Zokinvy Stalking Horse Bid sets a floor for the value of such assets, encouraging potential buyers to meet or exceed such floor price for the assets and potentially increasing the realizable value of the assets to the benefit of all parties in interest.

29. The payment of the Zokinvy Bid Protections will not diminish the Debtors' estates to the extent they become payable because any competing bid must exceed the Zokinvy Stalking Horse Bid by an amount in excess of the Break-Up Fee and the Expense Reimbursement. I believe that, absent the Debtors' commitment to the Break-Up Fee and the Expense Reimbursement, the

Debtors could lose the opportunity to obtain the best available offer for the Zokinvy Assets and would lose all downside protections offered by the existence of the Zokinvy Stalking Horse Bid. Based on the prepetition marketing process and the arms'-length negotiations between the Debtors and the Zokinvy Stalking Horse Purchaser, the Debtors have determined that Zokinvy Bid Protections are necessary to retain the Zokinvy Stalking Horse Purchaser's commitment to the consummation of the Sale Transaction. I believe that the Zokinvy Bid Protections, as a whole, are comparable to the bid protections often provided to the bidders in bankruptcy cases.

30. Executing the Zokinvy Stalking Horse APA has put the Debtors in a position to solicit competing bids that may be materially higher or may provide otherwise better value to the Debtors' estates than the Zokinvy Stalking Horse Bid. Accordingly, I believe that the benefits of the Zokinvy Stalking Horse APA outweigh the costs associated with the Zokinvy Bid Protections.

31. In light of the circumstances and in the context of the proposed Zokinvy Sale Transaction, I believe that the selection of the Zokinvy Stalking Horse Bid may result in the submission of additional offers for the Zokinvy Assets at higher values than would be received without the Zokinvy Stalking Horse Purchaser, and consequently, is the likely the best method to increase the available value of the Zokinvy Assets and produce a value maximizing sale transaction.

Conclusion

32. Accordingly, for all the foregoing reasons, I believe that the Bid Procedures, both the sale timeline for the Zokinvy Assets and the sale timeline for the Remaining Assets set forth herein, the approval of the Zokinvy Stalking Horse Bid and the Zokinvy Bid Protections: (a) are consistent with sales and marketing timelines for businesses of similar size and complexity; (b) will allow for an efficient sale of the Zokinvy Assets and a fulsome marketing process of the

Remaining Assets; (c) are reasonable and appropriate under the circumstances; and (d) will result in a value maximizing outcome for the Debtors.

[Remainder of page intentionally left blank.]

I declare under penalty of perjury that, after reasonable inquiry, the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated this 1st day of April, 2024

/s/ David Apelian
By: David Apelian
Chief Executive Officer

Exhibit 7

Revised Bid Procedures

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

In re: EIGER BIOPHARMACEUTICALS, INC., <i>et al.</i> 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. Wallace (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 8

Avexitide APA

ASSET PURCHASE AGREEMENT

by and between

Amylyx Pharmaceuticals, Inc., or a wholly owned subsidiary thereof, as Purchaser,

and

EIGER BIOPHARMACEUTICALS, INC., as Seller

Dated as of June 21, 2024

Table of Contents

	Page
ARTICLE 1. DEFINED TERMS	1
1.1 Defined Terms	1
1.2 Other Definitional and Interpretive Matters	11
ARTICLE 2. THE PURCHASE AND SALE; CLOSING.....	13
2.1 Purchase and Sale	13
2.2 Excluded Assets.....	14
2.3 Assumption of Liabilities.....	15
2.4 Excluded Liabilities	15
2.5 Excluded Contracts	15
2.6 Nontransferable Assets and Liabilities	16
2.7 Closing.....	16
2.8 Closing Deliveries of the Parties	16
2.9 Purchase Price; Assumed Liabilities; Deposits.....	17
2.10 Transfer Taxes	18
2.11 Allocation of Purchase Price.....	19
2.12 Escrow Accounts	19
2.13 Tax Withholding.....	19
ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE SELLER.....	20
3.1 Organization, Good Standing and Other Matters	20
3.2 Authority and Enforceability	20
3.3 Seller Conflict; Required Filings and Consents.....	20
3.4 Transferred Assets	21
3.5 Compliance With Laws	21
3.6 Regulatory and Healthcare Matters.	21
3.7 Permits	23
3.8 Litigation.....	23
3.9 Real Property	23
3.10 Assigned Contracts	23
3.11 Financial Statements	24
3.12 Absence of Material Developments.....	25
3.13 Customers and Suppliers	25
3.14 Intellectual Property.....	25
3.15 Inventories	26

3.16	Taxes.....	26
3.17	Brokers and Finders.....	28
3.18	No Other Representations or Warranties	28
ARTICLE 4.	REPRESENTATIONS AND WARRANTIES OF PURCHASER.....	28
4.1	Organization, Good Standing and Other Matters	28
4.2	Authority and Enforceability	28
4.3	No Conflict: Required Filings and Consents	28
4.4	Financing	29
4.5	Solvency	29
4.6	Litigation.....	29
4.7	Brokers and Finders.....	29
4.8	Investigation and Agreement by Purchaser; Non-Reliance of Purchaser; No Other Representations and Warranties.....	29
4.9	No Other Representations or Warranties	30
ARTICLE 5.	BANKRUPTCY COURT MATTERS	30
5.1	Competing Transaction.....	30
5.2	Bankruptcy Court Filings.....	30
5.3	Assumption of Assigned Contracts.....	31
ARTICLE 6.	PRE-CLOSING COVENANTS	32
6.1	Conduct of Business	32
6.2	Access to Information; Confidentiality.....	33
6.3	Efforts to Consummate	34
6.4	Notices and Consents.....	35
6.5	Regulatory Matters	35
6.6	Public Announcements	35
ARTICLE 7.	POST-CLOSING COVENANTS.....	36
7.1	Access to Information; Books and Records.....	36
7.2	Post-Closing Receipt and Possession of Assets.....	36
7.3	Tax Matters.....	36
ARTICLE 8.	CONDITIONS PRECEDENT	38
8.1	Conditions to Each Party’s Obligation	38
8.2	Conditions to Obligations of Purchaser	38
8.3	Conditions to Obligations of the Seller.....	38
8.4	Waiver of Condition; Frustration of Conditions	39

ARTICLE 9. TERMINATION.....	39
9.1 Events of Termination	39
9.2 Effect of Termination.....	40
9.3 Termination Fee.....	41
ARTICLE 10. GENERAL PROVISIONS	41
10.1 Survival of Representations, Warranties and Covenants	41
10.2 Entire Agreement.....	41
10.3 Amendment; No Waiver.....	42
10.4 Severability; Specific Versus General Provisions	42
10.5 Expenses and Obligations.....	42
10.6 Notices	43
10.7 Counterparts.....	43
10.8 Governing Law	44
10.9 Submission to Jurisdiction; Consent to Service of Process	44
10.10 Waiver of Jury Trial.....	44
10.11 Rights Cumulative	44
10.12 Assignment	44
10.13 Specific Enforcement; Remedies.....	45
10.14 Third-Party Beneficiaries.....	45
10.15 No Personal Liability of Directors, Officers and Owners.....	45
10.16 General Release.	46
10.17 Bulk Sales Laws.....	47
10.18 Legal Representation	47

SCHEDULES

Schedule 2.1(a)	Transferred Inventory
Schedule 2.1(b)	Assigned Contracts
Schedule 2.1(d)	Regulatory Information
Schedule 2.11	Preliminary Allocation Schedule
Schedule 3.3	Seller Conflict; Required Filings and Consents
Schedule 3.6(g)	IND or Clinical Trial for Avexitide
Schedule 3.10	Assigned Contracts
Schedule 3.12	Absence of Material Developments
Schedule 3.14(a)	Intellectual Property Registrations
Schedule 3.14(b)	Intellectual Property Agreements
Schedule 3.14(d)	Office Actions and Fees Due
Schedule 3.15	Inventories
Schedule 4.3	Purchaser Conflict; Required Filings and Consents
Schedule 6.1	Conduct of Business
Schedule 6.4	Notices and Consents
Schedule 8.2(c)	Third Party Consents

EXHIBITS

Exhibit A	Form of Bill of Sale and Assignment and Assumption Agreement
Exhibit B	Form of Escrow Agreement
Exhibit C	Form of Intellectual Property Assignment Agreement

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of June 21, 2024 (the “**Effective Date**”) is entered into by and between Amylyx Pharmaceuticals, Inc., a Delaware corporation, or a wholly owned subsidiary thereof (“**Purchaser**”) and Eiger BioPharmaceuticals, Inc., a Delaware corporation (the “**Seller**” or “**Eiger**”).

RECITALS

WHEREAS, on April 1, 2024 (the “**Petition Date**”) the Seller and certain of its Affiliates 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 “**Bankruptcy Court**”), thereby commencing chapter 11 cases (collectively, the “**Bankruptcy Cases**”);

WHEREAS, the Seller is a debtor-in-possession under the Bankruptcy Code and manages its properties and assets pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Seller is engaged in the Business and owns, directly or indirectly, all of the Transferred Assets;

WHEREAS, the Seller desires to sell (or cause to be sold) to Purchaser, and Purchaser desires to purchase from the Seller, all of the Transferred Assets Free and Clear, and the Seller desires Purchaser to assume, and Purchaser desires to assume from the Seller, all of the Assumed Liabilities, in each case upon the terms and subject to the conditions hereof, pursuant to a Sale Order and Sections 105(a), 363 and 365 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure;

WHEREAS, the transactions contemplated by this Agreement and the Related Documents are subject to approval by the Bankruptcy Court and will only be consummated pursuant, among other things, to the Sale Order to be entered in the Bankruptcy Cases; and

WHEREAS, concurrently with the execution of this Agreement, Purchaser shall deposit (or cause to be deposited) an aggregate amount equal to the Deposit Escrow Amount into an escrow account (the “**Deposit Escrow Account**”) to be established and maintained by Escrow Agent pursuant to the Escrow Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1. DEFINED TERMS

1.1 **Defined Terms.** The following terms shall have the following meanings in this Agreement:

“**Action**” means any action, audit, claim, complaint, summons, suit, proceeding, arbitration, third party mediation, audit, proceeding, dispute, hearing, inquiry, examination or litigation, whether civil, criminal, investigative, appellate or administrative, whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory, commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority, arbitrator, or mediator.

“**Affiliate**” of any particular Person means any other Person, directly or indirectly, controlling, controlled by, or under common control with, such particular Person. For the purposes of this definition, “**control**” (including, with correlative meaning, the terms “**controlled by**” and “**under common control with**”) means the possession, directly or indirectly, of the power to direct or cause the direction of the

management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

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

“**Allocation Schedule**” has the meaning set forth in Section 2.11.

“**Alternate Transaction**” has the meaning set forth in Section 9.1(b).

“**Applicable Law**” means, with respect to any Person, any federal, provincial, state, local law, non-U.S. or international, multinational or other law, legislation, treaty, convention, rule, Order, ordinance, principle of common law, code, guidance, regulation, statute or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority and the applicable rule of any stock exchange, applicable to such Person or such Person’s subsidiaries, Affiliates, or to any of their respective securities, assets, properties or businesses. For the avoidance of doubt, Applicable Laws shall include Information Privacy and Security Laws.

“**Apportioned Taxes**” has the meaning set forth in Section 7.3(a)(i).

“**Asset Taxes**” means any Taxes with respect to the ownership or operation of the Transferred Assets, excluding any Transfer Taxes that are the responsibility of Purchaser under Section 2.10.

“**Assigned Contracts**” has the meaning set forth in Section 2.1(b).

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

“**Assumption Notice**” has the meaning set forth in Section 5.3(a).

“**Attorney-Client Information**” has the meaning set forth in Section 10.18.

“**Auction**” has the meaning set forth in Section 5.2(h).

“**Avexitide**” means (a) a peptide having the sequence of H-Asp-Leu-Ser-Lys-Gln-Met-Glu-Glu-Glu-Ala-Val-Arg-Leu-Phe-Ile-Glu-Trp-Leu-Lys-Asn-Gly-Gly-Pro-Ser-Ser-Gly-Ala-Pro-Pro-Pro-Ser-NH₂, a truncated form of the glucagon-like peptide 1 receptor (GLP-1R) agonist exendin-4 peptide, with GLP-1 receptor (GLP-1R) antagonistic and GLP-1R-mediated signaling inhibiting activities; or (b) any salts, hydrates, solvates, esters, metabolites, intermediates, stereoisomers, polymorph, analogues, conjugates, complexes, cocrystals, derivatives, or formulations of the peptide described in the foregoing clause (a).

“**Avoidance Actions**” means any and all avoidance, recovery, subordination, or other claims, actions, rights, or remedies that may be brought by or on behalf of the Seller or its estate or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 510, 542, 543, 544, 545, and 547 through and including 553 of the Bankruptcy Code.

“**Back-Up Bid**” means the second highest or otherwise best bid that may be required to consummate the Transactions if the winning bidder fails to do so.

“**Back-Up Termination Date**” means the date that is forty-five (45) days after the conclusion of the Auction (or, if no Auction is held, forty-five (45) days after the date on which the Seller files a notice of cancellation of Auction).

“**Bankruptcy Cases**” has the meaning set forth in the Recitals.

“**Bankruptcy Code**” has the meaning set forth in the Recitals.

“**Bankruptcy Court**” has the meaning set forth in the Recitals.

“**Base Price**” means \$35,100,000.

“**Bid Procedures**” means those certain bidding procedures for the sale of the Seller’s assets approved by the Bankruptcy Court as filed at Docket No. 119.

“**Bid Procedures Order**” means that certain Order entered by the Bankruptcy Court at Docket No. 94 approving the Bid Procedures.

“**Bill of Sale and Assignment and Assumption Agreement**” means the bill of sale and assignment and assumption agreement, dated as of the Closing Date, by and between the applicable members of the Seller Group and Purchaser, substantially in the form attached hereto as Exhibit A.

“**Business**” means the business as presently conducted and as has been conducted in the twelve (12) months prior to the Effective Date of each member of the Seller Group related to the research, development and manufacture of Avexitide.

“**Business Books and Records**” has the meaning set forth in Section 2.1(e).

“**Business Day**” means any day other than (a) a Saturday, Sunday or federal holiday or (b) a day on which commercial banks in New York City, New York are authorized or required to be closed.

“**Business Intellectual Property**” means all Owned Intellectual Property Assets together with all other Intellectual Property used in, held for use in, or necessary for the conduct of the Business.

“**Clinical Trial**” means a clinical trial in human subjects that has been approved by an institutional review board or ethics committee, as applicable, and is designed to measure the safety or efficacy of a therapeutic product, including any phase 1 clinical trial, phase 2 clinical trial, phase 3 clinical trial, or any such clinical trial incorporating more than one (1) of these phases.

“**Closing**” has the meaning set forth in Section 2.7.

“**Closing Date**” has the meaning set forth in Section 2.7.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Competing Bid**” has the meaning set forth in Section 5.1.

“**Confidentiality Agreement**” means that certain Confidentiality Agreement, dated as of April 4, 2024, by and between the Seller and Amylyx Pharmaceuticals, Inc.

“**Consent**” means any consent, approval, authorization, waiver or license, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

“**Contract**” means any written agreement, mortgage, indenture, guarantee, lease (whether for real or personal property), contract or subcontract, or other agreement or instrument, whether written or oral

that is binding upon a Person or its property, in each case, other than a purchase order, service order or sales order.

“**Contracting Parties**” has the meaning set forth in Section 10.15.

“**Cure Costs**” means any and all costs or expenses required to be paid to assume any of the Assigned Contracts pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code.

“**Deposit Escrow Account**” has the meaning set forth in the Recitals.

“**Deposit Escrow Amount**” means the amount to be delivered to the Escrow Agent to be held in the Deposit Escrow Account in accordance with the Bid Procedures Order, which is \$1,755,000.

“**Designated Contracts**” has the meaning set forth in Section 5.3(b).

“**Designation Deadline**” has the meaning set forth in Section 5.3(b).

“**Determined Cure Costs**” means all Cure Costs for Assigned Contracts, as determined by a final order of the Bankruptcy Court and acceptable to the Purchaser, which shall not in any event exceed \$277,703.63.

“**Documents**” means all of the Sellers and its Affiliates’ written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies, and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form (excluding, in each case, any Tax Return of the Seller and its Affiliates).

“**Effective Date**” has the meaning set forth in the preamble.

“**Enforceability Exceptions**” means applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium, receivership and similar Applicable Laws affecting the enforcement of creditors’ rights generally and general equitable principles.

“**Escrow Agent**” means Kurtzman Carson Consultants LLC.

“**Escrow Agreement**” means the escrow agreement, dated as of the Effective Date, by and among Purchaser, the Seller and the Escrow Agent in substantially the form attached hereto as Exhibit B.

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

“**Excluded Contracts**” has the meaning set forth in Section 2.5.

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

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

“**Final Order**” means an Order, judgment or other decree of the Bankruptcy Court or any other Governmental Authority of competent jurisdiction that has not been reversed, vacated, modified or

amended, is not stayed and remains in full force and effect; *provided* that such Order shall be considered a Final Order only after the time period for third parties seeking appeal has expired without the filing of any appeal or motion for reconsideration.

“**Fraud**” means, with respect to the making of any representation or warranty set forth in ARTICLE 3 or ARTICLE 4, or in any certificate delivered pursuant to this Agreement, (a) a false representation of material fact with respect thereto, (b) knowledge that such representation is false, and (c) an intention to induce the party to whom such representation is made to act or refrain from acting in reliance upon it.

“**Free and Clear**” means free and clear of all Liens (other than the Assumed Liabilities) to the maximum extent permitted by Section 363(f) of the Bankruptcy Code.

“**GAAP**” means generally accepted accounting principles in the United States as of the Effective Date.

“**GCP**” means the applicable ethical, scientific, and quality standards required by applicable Governmental Authorities for designing, conducting, recording, and reporting trials that involve the participation of human subjects, including as set forth in FDA regulations in 21 C.F.R. Parts 11, 50, 54, 56, 312, 314, and 320 and all related FDA rules, regulations, orders, and guidances, and by the International Conference on Harmonization E6: Good Clinical Practices Consolidated Guideline (the “ICH Guidelines”), or as otherwise required by applicable Law.

“**GLP**” means the applicable good laboratory practice as required by the applicable Governmental Authorities, including under 21 C.F.R. Part 58 and all related FDA rules, regulations, orders, and guidances, and the requirements with respect to good laboratory practices prescribed by the European Community, the OECD (Organization for Economic Cooperation and Development Council) and the ICH Guidelines, or as otherwise required by applicable Law.

“**GMP**” means the applicable standards required by applicable Governmental Authorities for conducting manufacturing activities to pharmaceutical products (or active ingredients), including those promulgated by the FDA or EMA, applicable ICH guidelines or as otherwise required by applicable Law.

“**Governmental Authority**” means any domestic or foreign national, provincial, state, multi-state or municipal or other local government, any subdivision, agency, commission or authority thereof, any court (including the Bankruptcy Court), arbitrator (private or public) or tribunal or any quasi-governmental or private body exercising any regulatory or taxing authority thereunder (including the IRS and the FDA).

“**Healthcare Laws**” means any Applicable Laws pertaining to the research, development, testing, production, manufacture, transfer, storing, distribution, approval, labeling, marketing, pricing, Third Party reimbursement or sale and other commercialization of pharmaceutical products and biologics, including Applicable Laws governing the development, conduct, monitoring, patient informed consent, auditing, analysis and reporting of Clinical Trials, and relationships with payors, patients and healthcare professionals, such as the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), the exclusion laws (42 U.S.C. § 1320a-7), the civil monetary penalties law (42 U.S.C. § 1320a-7a) and laws governing the privacy, security and reporting of breaches involving health information such as the Health Insurance Portability and Accountability Act of 1996 and the Health Information and Technology for Economic and Clinical Health Act of 2009 (“HIPAA”).

“**IND**” means an investigational new drug application with respect to Avexitide filed with the FDA for beginning clinical trials in humans, or any comparable application filed with the regulatory authorities of a country other than the United States prior to beginning clinical trials in humans in that country, as well as all supplements or amendments filed with respect to such filings.

“Information Privacy and Security Laws” means all Applicable Laws concerning the privacy, protection, processing, transfer or security of Personal Information, including, if and where applicable, Health Insurance Portability and Accountability Act of 1996, as amended (**“HIPAA”**), state health privacy laws, breach notification laws, state social security number protection laws, the EU General Data Protection Regulation (**“GDPR”**), the UK Data Protection Act, the Federal Trade Commission Act, the Gramm Leach Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, state consumer protection Applicable Laws, and Applicable Laws governing email and telephonic marketing.

“Intellectual Property” means any and all intellectual property and proprietary rights in any jurisdiction throughout the world, including rights arising from the following: (i) patents and patent applications, and all inventions claimed therein, design rights, industrial design registrations and applications therefor, divisions, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, reexaminations, extensions and any provisional applications, and any foreign or international equivalent of any of the foregoing; (ii) Trademarks; (iii) works of authorship, copyrights and all registrations and applications for registration thereof, and any and all moral rights therein; (iv) trade secrets, confidential information, rights in data and databases, and know-how; (v) rights in formulae, methods, techniques, processes, assembly procedures, software, software code (in any form, including source code and executable or object code), subroutines, test results, test vectors, user interfaces, protocols, schematics, specifications, drawings, prototypes, molds and models, and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing), (vi) social media accounts, social media identifiers, internet domain name registrations, (vii) all rights to sue at law or in equity for any past, present or future infringement or other impairment of any of the foregoing, including the right to receive all proceeds and damages therefrom, and all rights to obtain renewals, continuations, divisions, or other extensions of legal protections pertaining thereto and (viii) all proceeds therefrom with respect to any of the foregoing, including any royalties.

“Intellectual Property Assignment Agreement” means the assignment agreement, dated as of the Closing Date, by and between the applicable member of the Seller Group and Purchaser, substantially in the form attached hereto as Exhibit C.

“Intellectual Property Registrations” means, with respect to any Owned Intellectual Property Assets, any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including domain names, registered Trademarks and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“IRS” means the United States Internal Revenue Service.

“Knowledge” means (a) with regard to the Seller, the actual knowledge, without any implication of verification or investigation concerning such knowledge of Seller’s chief executive officer, chief financial officer, general counsel, and chief technical officer, in each case, as of the Effective Date (or, with respect to a certificate delivered pursuant to this Agreement, as of the date of delivery of such certificate) and (b) with regard to Purchaser, the actual knowledge, without any implication of verification or investigation concerning such knowledge of Purchaser’s chief executive officer as of the Effective Date (or, with respect to a certificate delivered pursuant to this Agreement, as of the date of delivery of such certificate).

“Law Firm” means Sidley Austin LLP and its successors.

“Liabilities” shall mean debts, liabilities, duties, obligations, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, or commitments of any nature whatsoever, whether direct or indirect, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or

unmatured or otherwise, whenever or however arising (including whether arising out of any Contract or in a tort claim based on negligence or strict liability).

“**Lien**” means all forms of lien (including mechanic’s, contractor’s or other similar liens arising under or relating to the provision of goods or services on or to any Transferred Assets, and liens arising under the Bankruptcy Code), encumbrance, defect or irregularity in title, pledge, mortgage, deed of trust, deed to secure debt, security interest, charge, transfer restriction or similar agreement or encumbrance, including any dedication under any gathering, transportation, treating, processing, fractionating, purchase, sale or similar agreements, or any other rights granted or consensual as or against any Transferred Assets including easements, encroachments, rights of first refusal, options, or any other interest or right in property that constitutes a lien or interest within the definition or adjudication of such terms under Section 101(37) of the Bankruptcy Code.

“**Material Adverse Effect**” means any event, occurrence, effect, matter, change, circumstance, development or state of facts that, either alone or in combination with any other related effect, is or would reasonably be expected to be materially adverse to Avexitide, the Transferred Assets, or the Assumed Liabilities taken as a whole; provided, however, that none of the following shall be deemed (either alone or in combination) to constitute, and none of the following events, occurrences, effects, matters, changes, circumstances, developments or states of facts will be deemed, either alone or in combination, to constitute a Material Adverse Effect, or be taken into account in determining whether there has been or would reasonably be expected to be a Material Adverse Effect: (a) any change in, or effects arising from or relating to, general business, economic, social, legal, tax, regulatory, or political conditions or the securities, syndicated loan, credit or financial markets; (b) any change in currency exchange rates; (c) any change from, or effects arising from or relating to, the occurrence, escalation or material worsening of any act of God or other calamity, natural disaster, epidemic, pandemic, outbreak of disease or other public health emergency, outbreak, hostility, act of war, sabotage, cyber-attack or terrorism or military action; (d) any action taken by Purchaser or its Affiliates with respect to the Transactions or with respect to the Business; (e) any action taken by the Seller at the request of or with the consent of Purchaser or otherwise in compliance with the terms of this Agreement or any change from, or effects arising from or relating to, Purchaser’s failure to consent to any action restricted by Section 6.1; (f) any change in, or effects arising from or relating to changes in, Applicable Law or accounting rules (including GAAP) or any interpretation thereof; (g) the failure of the Business to meet any of its projections, forecasts, estimates, plans or predictions, (it being understood that the underlying cause of the failure to meet such projections, forecasts, estimates, plans or predictions may be taken into account in determining whether a Material Adverse Effect has occurred to the extent not otherwise excluded by this definition); except in the cause of clauses (a) through (c), to the extent such conditions, events, changes, crises and disasters, as applicable, do not have a material and disproportionate impact on Avexitide, the Transferred Assets and the Assumed Liabilities, taken as a whole, as compared to similar pharmaceutical products being manufactured and developed by pharmaceutical businesses (in which case, only the extent of such disproportionate effect shall be taken into account when determining whether a Material Adverse Effect has occurred or will occur).

“**Non-Transferred Asset**” has the meaning set forth in Section 2.6(a).

“**Nonparty Affiliates**” has the meaning set forth in Section 10.15.

“**Order**” means any order, assessment, award, decision, injunction, judgment, ruling or verdict entered, issued, made or rendered by any Governmental Authority or arbitrator, including any order entered by the Bankruptcy Court in the Bankruptcy Cases (including the Sale Order).

“**Organizational Documents**” means (a) the articles or certificates of incorporation and the by-laws of a corporation, (b) the partnership agreement and any statement of partnership of a general

partnership, (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (d) the operating or limited liability company agreement and the certificate of formation of a limited liability company, (e) any charter, joint venture agreement or similar document adopted or filed in connection with the creation, formation or organization of a Person not described in clauses (a) through (d), and (f) any amendment to or equivalent of any of the foregoing.

“**Outside Date**” has the meaning set forth in Section 9.1(i).

“**Owned Intellectual Property Assets**” means the Intellectual Property owned or purported to be owned by any member of the Seller Group that is used in, held for use in, or related to, the conduct of the Business as conducted in the twelve (12) months prior to the Effective Date or proposed to be conducted.

“**Permit**” means all permits, authorizations, certificates, franchises, consents and other approvals from any Governmental Authority.

“**Permitted Liens**” means any Liens that exist as of the Effective Date, each of which, for the avoidance of doubt, will be removed or released by operation of the Sale Order.

“**Person**” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or any other entity or Governmental Authority.

“**Personal Information**” means any information that (a) identifies or can be linked to an individual, including information that alone or in combination with other information held by a member of the Seller Group, can be used to identify, contact or precisely locate a person, including the name, address, telephone number, health information (included protected health information (as defined in 45 C.F.R. §106.103)) and personal data (as defined in the GDPR and the related national implementing Applicable Laws and regulations of the European Union Member States) or (b) is governed, regulated or protected by one or more Information Privacy and Security Laws.

“**Petition Date**” has the meaning set forth in the Recitals.

“**Pre-Closing Tax Period**” means any taxable period ending on or prior to the Closing Date and the portion of any Straddle Period through the end of the Closing Date.

“**Public Health Measures**” means any closures, “shelter-in-place,” “stay at home,” workforce reduction, social distancing, shut down, closure, curfew or other restrictions or any other Applicable Law, Orders, directives, guidelines or recommendations issued by any Governmental Authority, the Centers for Disease Control and Prevention, the World Health Organization, or any industry group in connection with COVID-19 or any other epidemic, pandemic, or outbreak of disease, or in connection with or in response to any other public health conditions.

“**Purchase Price**” means the Base Price *plus* the aggregate amount of Determined Cure Costs and Assumed Liabilities.

“**Purchaser**” has the meaning set forth in the preamble.

“**Purchaser’s FDA Transfer Letter**” means the letter to FDA in form and substance reasonably agreed by Purchaser and the Seller, accepting the transfer of rights to the IND issued by FDA for Avexitide from the Seller.

“**Purchaser Group Members**” has the meaning set forth in Section 10.18.

“**Purchaser Schedules**” has the meaning set forth in ARTICLE 4.

“**Regulatory Application**” means (a) the single application or set of applications for clinical investigation, approval or pre-market approval to conduct human clinical trials or manufacture and sell commercially a pharmaceutical therapeutic product submitted to the FDA including Investigational New Drug exemptions and any related registrations with or notifications to the FDA, (b) any foreign equivalents to such applications filed with any other national or supranational Governmental Authority, and (c) all supplements and amendments that may be filed with respect to any of the foregoing.

“**Regulatory Information**” means any INDs, filings, submissions, applications, declarations, data, reports or correspondence, including dossiers, manufacturing data, drug master files, inspection reports, adverse event reports and files, and complaint files, between Eiger or its Affiliates and any Governmental Authority that are in the possession or under the control of Eiger or its Affiliates and relate to Avexitide, including any IND, Regulatory Application and regulatory approval.

“**Regulatory Laws**” means the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 301 et seq.) and the rules, regulations, policies, and guidance promulgated thereunder by the FDA, including but not limited to GLPs, GCPs, GMPs, and all comparable federal, state, or foreign laws applicable to the Seller and its Affiliates or affecting their Business.

“**Related Claims**” means all claims or causes of action (whether in contract or tort, in law or in equity, or granted by statute or otherwise) that may be based upon, arise out of or relate to this Agreement, the Related Documents and any other document or instrument delivered pursuant to this Agreement or the Related Documents, or the negotiation, execution, termination, validity, interpretation, construction, enforcement, performance or nonperformance of this Agreement or the Related Documents or otherwise arising from the Transactions or the relationship between the parties (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with, or as an inducement to enter into, this Agreement or the Related Documents).

“**Related Documents**” means the Escrow Agreement, the Bill of Sale and Assignment and Assumption Agreement, and Intellectual Property Assignment Agreement.

“**Sale Order**” means an Order of the Bankruptcy Court issued pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code in form and substance reasonably acceptable to Purchaser and the Seller approving this Agreement and all of the terms and conditions hereof and approving and authorizing the Seller to consummate the Transactions contemplated hereby Free and Clear and containing a finding that Purchaser has, to the extent applicable, satisfied the requirements set forth in Section 363 of the Bankruptcy Code, including that the Purchaser has acted in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code.

“**Schedules**” has the meaning set forth in ARTICLE 3.

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

“**Seller Financial Statements**” has the meaning set forth in Section 3.11.

“**Seller Group**” means the Seller and each of its Affiliates.

“**Seller Group Members**” has the meaning set forth in Section 10.18.

“**Seller Group Taxes**” means any (i) Liability of the Seller Group for Taxes, (ii) any Liability for Asset Taxes attributable to any Pre-Closing Tax Period, and (iii) any Liability of Seller Group for the unpaid Taxes of any Person under Treasury Regulation §1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or successor, by contract, or otherwise.

“**Seller Permits**” has the meaning set forth in Section 3.7.

“**Solvent**” when used with respect to any Person, means that, as of any date of determination, (a) the fair salable value (determined on a going concern basis) of its assets and property will, as of such date, exceed the amounts required to pay its debts as they become absolute and mature, as of such date, (b) such Person will have adequate capital to carry on its business and (c) such Person will be able to pay its debts as they become absolute and mature, in the ordinary course of business, taking into account the timing of and amounts of cash to be received by it and the timing of and amounts of cash to be payable on or in respect of its indebtedness.

“**Straddle Period**” means any taxable year or other taxable period beginning on or before and ending after the Closing Date.

“**Tax**” means any federal, state, local, or non-U.S. tax of any kind whatsoever (including any income tax, franchise tax, branch profits tax, capital gains tax, value-added tax, unclaimed property, escheat, sales tax, use tax, property tax, transfer tax, payroll tax, social security tax or withholding tax), or other tax of any kind or any charge of any kind in the nature of (or similar to) taxes and any related fine, penalty, interest, or addition to tax with respect thereto, in each case whether disputed or not.

“**Tax Return**” means any return (including any information return), report, statement, election, schedule, notice, form, or other document or information (whether in tangible, electronic or other form), including any amendments, schedules attachments, supplements, appendices and exhibits thereto, filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority with respect to Taxes.

“**Termination Fee**” means a fee equal to three percent (3%) of the Base Price.

“**Third Party**” means any Person other than a party hereto or its Affiliates.

“**Trademark**” means, collectively, trademarks, service marks trade names, slogans, logos, trade dress or other similar source or origin identifiers (whether statutory or common law, whether registered or unregistered), together with all (a) registrations and applications for any of the foregoing, (b) extensions or renewals thereof, (c) goodwill (if any) connected with use thereof or symbolized thereby, and (d) rights and privileges arising under Contract or Applicable Law with respect to any of the foregoing.

“**Transactions**” means the transactions contemplated by this Agreement and the Related Documents.

“**Transfer Taxes**” has the meaning set forth in Section 2.10.

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

“**Transferred Inventory**” has the meaning set forth in Section 2.1(a).

1.2 **Other Definitional and Interpretive Matters.**

(a) Unless otherwise expressly provided, for purposes of this Agreement and the Related Documents, the following rules of interpretation shall apply:

(i) **Calculation of Time Period.** All references to a day or days shall be deemed to refer to a calendar day or days, as applicable, unless otherwise specifically provided. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) **Dollars.** Any reference to \$ shall mean U.S. dollars, which is the currency used for all purposes in this Agreement and the Related Documents. The specification of any dollar amount in the representations and warranties or otherwise in this Agreement, the Related Documents or the Schedules is not intended and shall not be deemed to be an admission or acknowledgement of the materiality of such amounts or items, nor shall the same be used in any dispute or controversy between the parties hereto to determine whether any obligation, item or matter (whether or not described herein or included in any schedule) is or is not material for purposes of this Agreement, the Related Documents or the Schedules.

(iii) **Exhibits/Schedules.** The Exhibits and Schedules to this Agreement are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Disclosure of any item on any Schedule shall not constitute an admission or indication that such item or matter is material or has resulted in or will result in a Material Adverse Effect or that the included items or actions are not in the ordinary course of business. No disclosure on a Schedule relating to a possible breach or violation of any Contract, Applicable Law or Order shall be construed as an admission or indication that a breach or violation exists or has actually occurred. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) **Gender and Number.** Any reference to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) **Headings.** The provision of a table of contents, the division of this Agreement or Related Documents into articles, sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement or Related Document, as applicable. Unless otherwise specified, all references in this Agreement to any "Section" or other subdivision are to the corresponding section or subdivision of this Agreement, and all references in a Related Document to any "Section" or other subdivision are to the corresponding section or subdivision of such Related Document.

(vi) **Herein.** The words such as "herein," "hereinafter," "hereof" and "hereunder" that are used in this Agreement refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. Uses of such words in the Related Documents shall refer to such Related Document as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) **Or.** The word "or" shall be construed in the inclusive sense of "and/or" unless otherwise specified.

(viii) **Including.** The word "including" or any variation thereof means (unless the context of its usage otherwise requires) "including, without limitation" and shall not be

construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(ix) Will. The word “will” will be construed to have the same meaning and effect as the word “shall”.

(x) Successors. A reference to any party to this Agreement, any Related Document or any other agreement or document shall include such party’s successors and permitted assigns.

(xi) Legislation. A reference to any legislation or to any provision of any legislation shall include any amendment thereto, and any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(xii) Reflected On or Set Forth In. An item arising with respect to a specific representation or warranty shall be deemed to be “reflected on” or “set forth in” a balance sheet or financial statement, to the extent any such phrase appears in such representation or warranty, if (a) there is a reserve, accrual or other similar item underlying a number on such balance sheet or financial statement that relates to the subject matter of such representation, (b) such item is otherwise specifically set forth on the balance sheet or financial statement or (c) such item is set forth in the notes to the balance sheet or financial statement.

(xiii) Contract. Any reference to any agreement or Contract will be a reference to such agreement or Contract as amended, modified, supplemented or waived.

(xiv) Made Available. Any reference in this Agreement to “made available” means a document or other item of information that was provided or made available to Purchaser or its representatives in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, the Transactions.

(b) All representations and warranties set forth in this Agreement or the Related Documents are contractual in nature only and subject to the sole and exclusive remedies set forth herein. The phrase “to Seller’s Knowledge” and phrases of similar import or effect are used herein to qualify and limit the scope of any representation or warranty in which they appear and are not affirmations of any Person’s “superior knowledge” that the representation or warranty in which they are used is true.

(c) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the Related Documents and, in the event an ambiguity or question of intent or interpretation arises, this Agreement and the Related Documents shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement and the Related Documents. The parties hereto agree that changes from earlier drafts to the final version of this Agreement do not necessarily imply that the party agreeing to such change is agreeing to a change in meaning (as the party agreeing to such change may believe the change is stylistic and non-substantive); consequently, no presumption should exist by virtue of a change from a prior draft.

ARTICLE 2.
THE PURCHASE AND SALE; CLOSING

2.1 **Purchase and Sale.** Upon the terms and subject to the conditions set forth in this Agreement and the Sale Order (except in the event where the terms and provisions of this Agreement and the Sale Order conflict, in which case the Sale Order shall govern and control), at the Closing, in exchange for an aggregate payment from Purchaser to the Seller equal to the Purchase Price, Purchaser shall purchase, assume and accept from the Seller, and the Seller shall sell, transfer, assign, convey and deliver (or shall cause the sale, transfer, assignment, conveyance and delivery) to Purchaser, Free and Clear, all of the rights, title and interests in, to and under the following assets and interests as the same shall exist on the Closing Date (collectively, the “**Transferred Assets**”):

(a) the inventory of Avexitide (including samples, retains, raw materials and active pharmaceutical ingredients) in Eiger’s possession and control and that is further described by category, quantity, unit of measure, lot number and storage location in Schedule 2.1(a) (such materials, the “**Transferred Inventory**”);

(b) all Contracts that are listed on Schedule 2.1(b) that Purchaser elects to have assumed and assigned to it pursuant to Section 5.3(b) (the “**Assigned Contracts**”);

(c) the Owned Intellectual Property Assets, including the Intellectual Property Registrations listed on Schedule 3.14(a)(i), and all Documents related thereto;

(d) the Regulatory Information related to Avexitide, including that set forth on Schedule 2.1(d) (the “**Transferred Regulatory Information**”); and

(e) the records and files to the extent relating to Avexitide in the possession or control of Eiger or any of its Affiliates, including: (i) supplier and vendor lists, (ii) promotional materials and (iii) other business records, to the extent that such other business records are required to be transferred to Purchaser under applicable law (the foregoing records and documents, collectively the “**Business Books and Records**”); *provided, however*, that Eiger may retain copies of the Business Books and Records to the extent related to products other than Avexitide; *provided, further*, that with respect to the preceding clauses (i) through (iii) such records shall be produced solely for such records created or acquired during the last three (3) years; *provided, further*, that Eiger is permitted to redact or remove any extraneous or other confidential or proprietary information not related to Avexitide;

(f) all rights to receive mail and other correspondences and communications (including electronic mail) addressed to the Seller or any other member of the Seller Group relating solely to Avexitide (including any such mail and other correspondence and communications (including electronic mail) from the FDA or any other Governmental Authority, customers, advertisers, suppliers, distributors, agents and others and payments with respect to Avexitide);

(g) all Avoidance Actions arising at any time prior to the Closing solely and exclusively related to the Transferred Assets;

(h) all of the Seller Group’s rights, claims or causes of action against Third Parties relating to the assets, properties, business or operations of the Seller Group with respect to the Business, the Transferred Assets and the Assumed Liabilities (including all guaranties, warranties, indemnities and similar rights in favor of the Seller Group or any their Affiliates to the extent solely related to the Transferred Assets or the Assumed Liabilities), in each case, whether arising by way of counterclaim or otherwise, and whether arising out of transactions occurring prior to, on or after the Closing Date, except for such rights, claims and causes of action related to the Excluded Assets or Excluded Liabilities; and

(i) all prepaid expenses, claims, deposits, prepayments, refunds, causes of action, demands, actions, suits, choses in action, rights of recovery, rights under guarantees, warranties, indemnities and all similar rights against Third Parties, rights of setoff and rights of recoupment, in each

case, to the extent used in or held for use for the Transferred Assets listed in clauses (a) through (h) above or the Assumed Liabilities.

2.2 **Excluded Assets.** Notwithstanding the provisions of Section 2.1 or anything to the contrary herein, any and all assets, rights and properties of the Seller Group that are not specifically identified in Section 2.1 as Transferred Assets, including the following (collectively, the “**Excluded Assets**”), shall be retained by the Seller Group, and Purchaser and its designees shall acquire no right, title or interest in the Excluded Assets in connection with the Transaction:

(a) all (i) cash and cash equivalents, wherever located, including bank balances and bank accounts or safe deposit boxes, monies in the possession of any banks, savings and loans or trust companies and similar cash items, (ii) escrow monies and deposits in the possession of landlords and utility companies, and (iii) investment securities and other short- and medium-term investments;

(b) all records, documents or other information exclusively relating to current or former employees of the Seller Group that are not hired by Purchaser, and any materials to the extent containing information about any employee, disclosure of which would violate Applicable Law or such employee’s reasonable expectation of privacy;

(c) any interest of the Seller Group under this Agreement or the Related Documents, including the right to receive the Purchase Price and to enforce the Seller’s rights and remedies thereunder;

(d) all Excluded Contracts (including all prepaid assets relating to the Excluded Contracts), other than the Assigned Contracts, to which any member of the Seller Group or any of their respective Affiliates is a party;

(e) any (i) Attorney-Client Information arising from communications prior to the Closing Date between a member of the Seller Group (including any one or more officers, directors or stockholders of such Seller Group member), on the one hand, and its counsel, on the other hand, and (ii) claims under any director and officer, errors and omissions, fiduciary and commercial crime insurance policies; and

(f) any rights of the Seller Group to Tax refunds (or credits for overpayment of Taxes in lieu of a refund) attributable to any Pre-Closing Tax Period (as determined in accordance with Section 7.3(a)(iii));

(g) all Permits (including applications therefor and any trade or import/export Permits) that (i) are not related to the Business or (ii) are not transferable to Purchaser under Applicable Law;

(h) originals and copies of those books and records, documents, data and information (in whatever form maintained) of the Seller Group and the Business: (i) all corporate minute books (and other similar corporate records) and stock records of the Seller Group, (ii) any books and records exclusively relating to the Excluded Assets or (iii) any books, records or other materials that any member of the Seller Group (x) is required by Applicable Law to retain (copies of which, to the extent permitted by Applicable Law, will be made available to Purchaser upon Purchaser’s reasonable request), (y) reasonably believes is necessary to enable it to prepare or file Tax Returns (copies of which will be made available to Purchaser upon Purchaser’s reasonable request) or (z) are prohibited by Applicable Law from delivering to Purchaser; *provided* that Seller will provide copies to Purchaser of all such books, records or other materials described in Section 2.2(h)(iii) at the Closing to the extent not prohibited by Applicable Law;

(i) any assets not otherwise designated as Transferred Assets or from time to time designated by the parties hereto as Excluded Assets;

(j) all accounts receivable, intercompany obligations and other amounts receivable by the Seller Group;

(k) the Avoidance Actions other than those set forth in Section 2.1(g);

(l) all of the Seller Group's rights, claims or causes of action against third parties relating to the assets, properties, business or operations of the Seller Group (including all guaranties, warranties, indemnities and similar rights in favor of the Sellers Group or any of their Affiliates) to the extent arising under the Bankruptcy Code or not related to the Business, Transferred Assets or the Assumed Liabilities, in each case, whether arising by way of counterclaim or otherwise, and whether arising out of transactions occurring prior to, on or after the Closing Date;

(m) the Tax Lien, identified as assessment No. 23-033078-468530-003, in the amount of \$3,914.12 recorded in California, County of Santa Clara; and

(n) all prepaid expenses, claims, deposits, prepayments, refunds, causes of action, demands, actions, suits, rights of recovery, rights under guarantees, warranties, indemnities and all similar rights against Third Parties, rights of setoff and rights of recoupment, in each case, to the extent exclusively related to or exclusively used in or held for use for the Excluded Assets listed in clauses (a) through (m) above.

Notwithstanding any provision to the contrary contained in this Agreement or any of the other Related Documents, Purchaser acknowledges and agrees that all of the following are also Excluded Assets, and all right, title and interest in and to all Excluded Assets shall be retained by the Seller Group and shall remain the property of the Seller Group (and shall expressly be excluded from the sale, transfer, assignment and conveyance to Purchaser hereunder), and neither Purchaser nor any of its Affiliates shall have any interest therein: (x) all records and reports prepared or received by the Seller Group or any of their Affiliates in connection with the sale of the Business and the Transactions, including all analyses relating to the Business or Purchaser so prepared or received; and (y) all confidentiality agreements with prospective purchasers of the Business or any portion thereof and all bids and expressions of interest received from Third Parties with respect thereto.

2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, Purchaser shall, effective as of the Closing, assume and agree to pay and perform in accordance with their terms the following Liabilities of the Seller Group arising from or related to the Transferred Assets as the same shall exist on the Closing Date arising only after the Closing Date (collectively, the "**Assumed Liabilities**"):

(a) all Liabilities relating to the Transferred Assets solely to the extent such Liabilities relate to and arise in periods following the Closing;

(b) subject to Section 2.4, all Liabilities arising under the Assigned Contracts solely to the extent such Liabilities relate to and arise in periods following the Closing, and all of the Determined Cure Costs; and

(c) all Taxes for which Purchaser is liable pursuant to this Agreement.

2.4 Excluded Liabilities. Notwithstanding Section 2.3, Purchaser is assuming only the Assumed Liabilities of the Seller Group and will not assume or be liable for any Excluded Liabilities (including Seller Group Taxes), and the Seller Group shall retain and shall be responsible for, all Liabilities that are not Assumed Liabilities, including all Liabilities related to Excluded Assets or any other Liabilities of the Business (all such Liabilities not being assumed herein referred to as the "**Excluded Liabilities**").

2.5 Excluded Contracts. Pursuant to Section 5.3(b), Purchaser shall be entitled, in its sole discretion, by written notice to the Seller up to two (2) Business Days prior to the Closing Date, to elect not to purchase or have assumed and assigned to Purchaser one or more Contracts, in which case, notwithstanding anything in this Agreement or any Related Document to the contrary, such Assigned Contract shall be considered an excluded contract ("**Excluded Contract**") and shall constitute an Excluded Asset and not be included in the Transferred Assets for all purposes of this Agreement, and Purchaser shall not have any obligation to satisfy or pay any Cure Costs or other Liabilities with respect to such Excluded

Contract. Each assignable Contract that Purchaser does not elect to remove from the list of Designated Contracts pursuant to Section 5.3(b) shall be an Assigned Contract.

2.6 Nontransferable Assets and Liabilities.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Transferred Asset or any claim, right or benefit arising thereunder or resulting therefrom if an attempted assignment or transfer thereof, without the Consent of a Third Party (including any Governmental Authority) (after giving effect to the Sale Order or any other applicable order of the Bankruptcy Court that effects such transfer without any required Consents), would constitute a breach or other contravention thereof or a violation of Applicable Law (each, a “**Non-Transferred Asset**”).

(b) If, on the Closing Date, any third-party Consent is not obtained for a Non-Transferred Asset, or if an attempted transfer or assignment thereof would be ineffective or a violation of Applicable Law, then, until any requisite consent is obtained therefor and the same is transferred and assigned to Purchaser or its designee, each such Non-Transferred Asset shall be held by the Seller as agent for the Purchaser, and the Seller shall, to the extent permitted by Applicable Law, provide to Purchaser the benefits and Purchaser shall assume the obligations and bear the economic burdens associated with such Non-Transferred Asset. The Seller and Purchaser shall use commercially reasonable efforts to enter into agreements (including subcontracting, sublicensing or subleasing, if permitted) by which (i) the Seller shall, at Purchaser’s sole expense provide Purchaser with the economic and operational equivalent of obtaining the requisite third-party Consent and assigning the applicable Non-Transferred Asset to Purchaser (including, with the prior written consent of Purchaser, enforcing for the benefit of Purchaser, and at Purchaser’s sole expense, all claims or rights arising thereunder) and (ii) Purchaser shall perform, at its sole expense, the obligations and assume the economic burdens of the Seller or its Affiliates to be performed after the Closing with respect to such Non-Transferred Asset. Purchaser shall promptly, upon receipt of a written request therefor from the Seller, reimburse the Seller for all reasonable, documented monies paid by the Seller on Purchaser’s behalf in connection with any Assumed Liability not assigned or transferred to Purchaser pursuant to this Section 2.6.

2.7 Closing. The closing of the Transactions (the “**Closing**”) will take place remotely by electronic exchange of documents on the date (the “**Closing Date**”) that is the second (2nd) Business Day after the date on which all of the conditions set forth in ARTICLE 8 (excluding conditions that, by their terms, are to be satisfied at the Closing, but subject to the satisfaction or waiver of all such conditions at the Closing), have been satisfied or waived by the party hereto entitled the benefit of the same, unless another time or date is agreed to in writing by the parties hereto. Except as otherwise set forth herein, all proceedings to be taken and all documents to be executed and delivered by all parties hereto at the Closing will be deemed to have been taken and executed simultaneously and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed, and delivered.

2.8 Closing Deliveries of the Parties. At or prior to the Closing:

(a) Purchaser and the Seller shall execute and deliver the Bill of Sale and Assignment and Assumption Agreement;

(b) Purchaser and the Seller shall execute and deliver the Intellectual Property Assignment Agreement;

(c) Escrow Agent, Purchaser and the Seller shall execute and deliver the Escrow Agreement;

(d) On the Closing Date, each party shall transmit the Purchaser’s FDA Transfer Letters to the FDA and shall take any other actions reasonably necessary to effect the transfer of Avexitide from the Seller to Purchaser;

(e) Purchaser shall deliver, or cause to be delivered, to the Seller or the applicable Person each of the following:

- (i) a certificate, dated as of the Closing Date, executed by or on behalf of Purchaser as to the satisfaction of the conditions set forth in Section 8.3(a) and Section 8.3(b);
- (ii) payment of the closing payments set forth in Section 2.9; and
- (iii) a written agreement from Purchaser to be bound by the Stanford License Agreement.

(f) the Seller shall deliver, or cause to be delivered, to Purchaser or the applicable Person each of the following:

- (i) the Sale Order (which shall include the Free and Clear Provision);
- (ii) the Documents related to the Owned Intellectual Property Assets, including file histories for all patents and patent applications;
- (iii) the Third Party Consents;
- (iv) evidence of Seller's written notice delivered as of June 18, 2024, to The Board of Trustees Of The Leland Stanford Junior University ("**Stanford**") of the intended assignment of that certain agreement between Stanford and Tracey McLaughlin and Colleen Craig, effective as of May 4, 2015 (as amended September 25, 2015 and May 11, 2018) (the "**Stanford License Agreement**");
- (v) an executed copy to Stanford of a written agreement from Purchaser to be bound by the Stanford License Agreement;
- (vi) payment of One Hundred Thousand Dollars (\$100,000) to Stanford in consideration of the assignment of the Stanford License Agreement to Purchaser;
- (vii) instruments reasonably requested by Purchaser to transfer power of attorney or other similar authorization to prosecute the Owned Intellectual Property Assets to Purchaser or its representatives;
- (viii) a certificate, dated as of the Closing Date, executed by or on behalf of the Seller as to the satisfaction of the conditions set forth in Section 8.2(a) and Section 8.2(b); and
- (ix) a valid IRS Form W-9 with respect to the Seller, properly completed and executed, dated as of the Closing Date.

2.9 Purchase Price; Assumed Liabilities; Deposits.

(a) At the Closing, upon the terms and subject to the conditions set forth herein, in full consideration for the sale, transfer, conveyance, assignment and delivery of the Transferred Assets to Purchaser and assumption of the Assumed Liabilities by Purchaser, Purchaser shall (i) pay to the Seller an aggregate amount equal to the Base Price *minus* the Deposit Escrow Amount, which shall be released to the Seller by the Escrow Agent pursuant to Section 2.9(c) by irrevocable wire transfer of immediately available funds in accordance with payment instructions delivered by the Seller to Purchaser in writing at least one (1) Business Day prior to the Closing; and (ii) assume the Assumed Liabilities.

(b) At the Closing, on the terms and subject to the conditions set forth in this Agreement, Purchaser will assume and become responsible for the Assumed Liabilities. Purchaser agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms hereof, including paying or causing to be paid, at or prior to the Closing, all Determined Cure Costs.

(c) The Deposit Escrow Amount shall be distributed as follows:

(i) if the Closing shall occur, (A) Purchaser and the Seller shall jointly deliver a written instruction to the Escrow Agent in accordance with the Escrow Agreement instructing the Escrow Agent to release from the Deposit Escrow Account the entire Deposit Escrow Amount to the Seller, by irrevocable wire transfer of immediately available funds, to an account designated by the Seller to the Escrow Agent, and (B) the Deposit Escrow Amount shall be delivered to the Seller at Closing and credited against the amount required to be paid by Purchaser to the Seller at Closing in accordance with Section 2.9(a);

(ii) if this Agreement is validly terminated by the Seller pursuant to Section 9.1(f), (A) the Seller shall deliver a written instruction to the Escrow Agent in accordance with the Escrow Agreement instructing the Escrow Agent to release from the Deposit Escrow Account the entire Deposit Escrow Amount to the Seller, by irrevocable wire transfer of immediately available funds, to an account designated by the Seller to Escrow Agent and (B) the Deposit Escrow Amount, which shall constitute liquidated damages (and not a penalty), shall be delivered to the Seller in accordance with the terms of the Escrow Agreement; or

(iii) if this Agreement is validly terminated for any reason in accordance with the terms of this Agreement other than by the Seller pursuant to Section 9.1(f), (A) Purchaser shall deliver a written instruction to the Escrow Agent in accordance with the Escrow Agreement instructing the Escrow Agent to release from the Deposit Escrow Account the entire Deposit Escrow Amount to Purchaser, by irrevocable wire transfer of immediately available funds, to an account designated by Purchaser to the Escrow Agent, and (B) the Deposit Escrow Amount shall be delivered to Purchaser in accordance with the terms of the Escrow Agreement.

(d) If (i) the parties are unable to agree on the joint instructions to deliver to the Escrow Agent in accordance with Section 2.9(c)(i) above within ten (10) days of discussion thereof by the parties, or (ii) there is any dispute between the parties regarding any release instructions delivered individually by Seller or Purchaser pursuant to Section 2.9(c)(ii) or Section 2.9(c)(iii), then in each case ((i) and (ii)), such dispute will be submitted to a court of competent jurisdiction (it being understood that the Escrow Agent shall be entitled to conclusively rely and act upon any Order and shall have no obligation to determine whether any such Order is final and non-appealable).

Any issue regarding the entitlement to the Deposit Escrow Amount shall be determined by the Bankruptcy Court, and Purchaser consents to the jurisdiction of the Bankruptcy Court for any issue related to this Agreement.

2.10 **Transfer Taxes.** Purchaser shall be solely responsible for, and shall indemnify, defend, and hold harmless the Seller Group for, any transfer, documentary, sales, use, excise, stock transfer, value-added, stamp, recording, registration and other similar taxes, levies and fees (including any penalties, fines and interest), together with any conveyance fees, recording charges and other similar fees and charges, incurred in connection with this Agreement and the Transactions (collectively, "**Transfer Taxes**").

Purchaser and the Seller shall cooperate in good faith to minimize, to the extent permissible under Applicable Law, the amount of any Transfer Taxes due with respect to the Agreement.

2.11 **Allocation of Purchase Price.** The Purchase Price (including all other amounts treated as consideration for U.S. federal income tax purposes) and Assumed Liabilities shall be allocated for Tax purposes as set forth on Schedule 2.11, in a manner consistent with Section 1060 of the Code and any analogous provisions of Applicable Law (the “**Preliminary Allocation Schedule**”). Within ninety (90) days following the final determination of the Purchase Price, Purchaser shall deliver to the Seller a schedule allocating the Purchase Price (including all other amounts treated as consideration for U.S. federal income Tax purposes) and Assumed Liabilities among the Transferred Assets (the “**Allocation Schedule**”). The Allocation Schedule shall be prepared in accordance with the same methodologies used in the Preliminary Allocation Schedule. Seller shall have a period of thirty (30) days following the delivery of the Allocation Schedule to notify Purchaser in writing of any comments to such Allocation Schedule. In the event Seller timely notifies Purchaser in writing of any comments, the Purchaser shall make any reasonable changes suggested by Seller and, reasonably thereafter, Purchaser shall deliver a final Allocation Schedule to the Seller. Such final Allocation Schedule shall be binding among the parties. The parties shall report, act, and file their respective Tax Returns (including IRS Form 8594) in accordance with such final Allocation Schedule and any adjustments thereto and shall not take any position on a Tax Return or in a Tax audit or similar proceeding inconsistent with such allocation and any adjustments thereto. Seller shall timely and properly deliver all such documents, forms and other information as Purchaser may reasonably request to prepare the Allocation Schedule and any adjustments thereto. Purchaser, on the one hand, and the Seller, on the other hand, shall notify the other if it receives notice that any Governmental Authority proposes any allocation different from the final Allocation Schedule.

2.12 **Escrow Accounts.** At the Closing, the Deposit Escrow Amount shall be used to satisfy a portion of the payment obligations of Purchaser pursuant to Section 2.9(c)(i), otherwise the Deposit Escrow Amount shall be released to Purchaser or the Seller pursuant to Section 2.9(c)(iii) or 2.9(c)(ii), respectively. Upon the final release of all of the Deposit Escrow Amount pursuant to the terms of this Agreement and the Escrow Agreement, the Escrow Agreement shall automatically terminate. Any fees owed to the Escrow Agent and obligations under the Escrow Agreement shall be borne fifty percent (50%) by Purchaser and fifty percent (50%) by the Seller. The Deposit Escrow Amount shall be held in trust for the benefit of the Seller and shall not be subject to any encumbrance, attachment, trustee process or any other judicial process of any creditor of any party hereto, and shall be held and disbursed solely for the purposes of and in accordance with the terms of this Agreement and the Escrow Agreement.

2.13 **Tax Withholding.** Notwithstanding anything in this Agreement to the contrary, Purchaser and any other applicable withholding agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement and the Transactions to any Person such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code and the rules and regulations promulgated thereunder, or any provision of any Applicable Law relating to Taxes; provided, however, that the Purchaser shall use commercially reasonable efforts to (i) provide commercially reasonable notice to the Person prior to such deduction and withholding (other than withholding resulting from the failure to provide a valid, properly executed IRS Form W-9) and (ii) afford the Person a reasonable opportunity to provide any additional information, forms or certifications to establish an exemption from, or obtain a reduced rate of, withholding. To the extent that amounts are so withheld and properly remitted by Purchaser to the applicable taxing authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Person in respect of which such deduction and withholding was made by Purchaser. Notwithstanding anything to the contrary in this Agreement, all amounts subject to

compensatory withholding contemplated to be paid by this Agreement will be paid through the applicable payroll system in accordance with applicable payroll procedures.

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as disclosed in a document herewith delivered by the Seller to Purchaser (the “**Schedules**”), the Seller hereby makes the representations and warranties contained in this ARTICLE 3 to Purchaser.

3.1 **Organization, Good Standing and Other Matters.** Each member of the Seller Group is duly organized, validly existing and in good standing under the Applicable Laws of its jurisdiction of organization and has, subject to the necessary authority of the Bankruptcy Court, all requisite corporate power and authority to operate the Business and necessary to own, lease or operate the properties and assets owned, leased or operated by it, including the Transferred Assets, to carry on the Business as now being conducted, except where the failure to be so duly organized, validly existing and in good standing, or to have such power and authority, would not adversely affect the Seller Group’s ability to transfer the Transferred Assets as contemplated pursuant to this Agreement. Each member of the Seller Group is duly qualified to do business as a foreign company in each jurisdiction in which the nature of the Business as currently conducted by it or the property owned or leased by it makes such qualification necessary, except where the failure to be so qualified would not adversely affect the Seller Group’s ability to transfer the Transferred Assets as contemplated pursuant to this Agreement.

3.2 **Authority and Enforceability.** Subject to Bankruptcy Court approval, the Seller has all requisite power and authority to execute and deliver, and to cause each member of the Seller Group to execute and deliver, this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery, and performance of this Agreement and each of the Related Documents to which the Seller is (or at Closing, will be) a party thereto, and the consummation by the Seller of the Transactions, has been duly authorized and approved by all necessary limited liability company action on the part of the Seller and are subject to the approval of the Bankruptcy Court. This Agreement has been, and each Related Document will be, at or prior to the Closing, duly executed and delivered by the Seller and, assuming the due execution and delivery by the other parties hereto or thereto, and subject to the approval of the Bankruptcy Court, constitutes a valid and binding obligation of the Seller, enforceable against it in accordance with its respective terms, except to the extent that such enforceability may be subject to, and limited by, the Enforceability Exceptions.

3.3 **Seller Conflict; Required Filings and Consents**

(a) Except (i) such filings as may be required in connection with the Transfer Taxes described in Section 2.10 and (ii) as otherwise set forth on Schedule 3.3, the execution and delivery of this Agreement by the Seller does not and the execution and delivery of the Related Documents by the Seller will not, and the consummation of the Transactions hereby and thereby will not (A) violate the provisions of the Organizational Documents of any member of the Seller Group, (B) subject to the entry of the Sale Order, violate any Applicable Law or Order to which any member of the Seller Group is subject or by which its properties or assets, including the Transferred Assets, are bound, (C) require any member of the Seller Group to obtain any Consent, or give any notice to, or make any filing with, any Governmental Authority on or prior to the Closing Date (except as required by the Bankruptcy Code or the Sale Order), (D) subject to the entry of the Sale Order, violate or result in a breach of or constitute a default (with or without due notice or lapse of time or both), give rise to any right of termination, modification, cancellation or acceleration under, or require the Consent of any Third Party to, any Assigned Contract or any enforceable loan or credit agreement or other Contract to which any member of the Seller Group is a party, or (E) subject to the entry of the Sale Order, result in the imposition or creation of any Lien upon or with respect to any of the assets or properties of the Seller Group.

(b) No member of the Seller Group is required to file, seek or obtain any notice, authorization, approval, Order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Seller of this Agreement or the consummation by such member of the Seller Group of the Transactions.

3.4 Transferred Assets.

(a) The Seller Group (i) owns, leases or has the legal right to use all of the Transferred Assets and (ii) has good, legal, valid, and marketable title to, and the right to transfer (or cause to be transferred) in accordance with the terms of this Agreement, all the Transferred Assets Free and Clear, except for Permitted Liens.

(b) Purchaser will acquire at Closing good, legal, valid, and marketable title to, a valid leasehold interest in, or a valid license or right to use, the Transferred Assets, Free and Clear. To the Knowledge of Seller, there are no adverse claims of ownership to the Transferred Assets and neither Seller nor any of its respective Affiliates has received written notice that any Person has asserted a claim of ownership or right of possession or use in or to any of the Transferred Assets.

(c) The Transferred Assets constitute all of the properties, assets, regulatory and technical documents, and other rights owned, used, held for use, leased, licensed or sublicensed by Seller or any of its Affiliates that is necessary for, or used by Seller in connection with the research, development, manufacture or other exploitation of Avexitide or operation of the Business.

(d) The Assigned Contracts are the only agreements by and between Seller or any of its Affiliates and any Third Party pursuant to which any Third Party grants Seller or any of its Affiliates any license, sublicense (or use or other exploitation) or other rights to or under any Third Party's patents or, to the Knowledge of Seller, any know-how that, in whole or in part, are necessary or useful for developing, manufacturing or commercializing Avexitide or operation of the Business.

(e) Avexitide was not developed or manufactured by or on behalf of any member of the Seller Group using Intellectual Property of a Third Party that is used in, held for use in, or necessary for developing, manufacturing or otherwise exploiting Avexitide other than (i) the Intellectual Property licensed to a member of the Seller Group under any Assigned Contracts (ii) the Owned Intellectual Property Assets.

(f) All Liens (including any Permitted Liens) existing as of the Effective Date will be removed or released by operation of the Sale Order.

3.5 **Compliance With Laws.** (a) the Seller Group is conducting and has conducted the Business in compliance in all material respects with all material Applicable Laws applicable to the Business, including all Healthcare Laws and Regulatory Laws, and (b) no member of the Seller Group has received any written notice in the past three (3) years of any violations of any Applicable Law applicable to their conduct of the Business or any Transferred Asset.

3.6 Regulatory and Healthcare Matters.

(a) As of the Effective Date, the Seller Group is, and for the past three years has been in material compliance with applicable Regulatory Laws and Healthcare Laws. Avexitide is being, and at all times has been, used, researched, developed, investigated, tested, labeled, manufactured, packaged, stored, imported, exported, and distributed in material compliance with all applicable Regulatory Laws.

(b) As of the Effective Date, the Seller Group holds all permits, licenses, certifications, registrations, qualifications, authorizations, consents or approvals of the FDA or any other Governmental Authority (collectively, “**Regulatory Permits**”) that are material to the operation, sale and development of Avexitide as presently conducted, and all such Regulatory Permits are in full force and effect and no event has occurred that allows or, after notice or lapse of time would allow, revocation or termination thereof, or would result in any other material impairment to the rights of the holder of any Regulatory Permits. All Regulatory Permits are included in the Transferred Assets, and the Seller has made available to Purchaser true and complete copies of all such Regulatory Permits.

(c) As of the Effective Date, neither the Seller Group nor, to the Seller’s Knowledge, any other Person has received any notice or other communication from any Governmental Authority of any pending or threatened claim, suit, proceeding, hearing, enforcement, audit, investigation, or arbitration alleging potential or actual noncompliance by or liability of the Seller Group under any Regulatory Laws or that threatening to withdraw or suspend any Regulatory Permits. The Seller Group has not received any notice from any Governmental Authority, nor to the Seller’s Knowledge, there are no facts that could reasonably lead to such notice, that Avexitide cannot be used, researched, developed, investigated, tested, labeled, manufactured, packaged, stored, imported, exported, or distributed substantially in the manner presently performed or contemplated by or on behalf of Seller Group.

(d) The Seller Group has filed with the applicable Governmental Authorities all required Regulatory Information material to the Business. All Regulatory Information was in material compliance with Applicable Law, including Regulatory Laws, when filed, and no deficiencies have been asserted by any Governmental Authority with respect to any such Regulatory Information.

(e) As of the Effective Date, the Seller Group has not received from any Governmental Authority or been subject to: (i) any FDA Form 483s directly relating to Avexitide; (ii) any FDA notices of adverse findings relating to Avexitide; or (iii) any warning letters, untitled letters, prohibition notices, recall notices or equivalent in any jurisdiction from the FDA or any other Governmental Authority in which the FDA or such other Governmental Authority alleged or asserted that the actions of Seller Group, with respect to Avexitide, were not in compliance with Applicable Laws.

(f) The Seller Group has not either voluntarily or involuntarily initiated, conducted or issued any recall, safety alert or report, warning, “dear doctor” letter, investigator notice, or other notice or action, in each case relating to an alleged lack of safety, efficacy, or regulatory compliance of Avexitide, and as of the date hereof, no Governmental Authority has ordered, commenced, or threatened to initiate any action to cause, and to the Seller’s Knowledge there are no circumstances that would be reasonably likely to result in any such notice or action or any termination or suspension of distribution or development of Avexitide.

(g) Except as set forth on Schedule 3.6(g), the Seller Group has not directly or indirectly (including through any Third Party subcontractor or sublicensee) sponsored any IND or conducted any Clinical Trial for Avexitide. All ongoing and completed Clinical Trials related to Avexitide conducted by or on behalf of, or sponsored by, the Seller Group have been conducted in accordance with all applicable Regulatory Laws and all applicable trial protocols. No Clinical Trial conducted by or on behalf of the Seller Group with respect to Avexitide have been placed on full or partial clinical hold or terminated or suspended prior to completion. The Seller Group has not received any written notice that any Governmental Authority or any institutional review board or ethics committee or any other similar body has: (i) refused to approve any Clinical Trial, or any substantial amendment to a protocol for any Clinical Trial, conducted or proposed to be conducted by or on behalf of the Seller Group; (ii) initiated, or threatened to initiate, any action to suspend a Clinical Trial conducted by or on behalf of the Seller Group or otherwise

restrict or delay the Clinical Trial of Avexitide; or (iii) alleged that any Clinical Trial conducted by or on behalf of the Seller Group are in violation of any Regulatory Laws.

(h) Neither the Seller Group, nor, to Seller's Knowledge, any director, officer, employee, or agent of the Seller Group has ever made an untrue state of material fact or fraudulent statement to the FDA, or any other Governmental Authority, failed to disclose a material fact required to be disclosed under applicable law to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement, that, in each case, could reasonably be expected to provide a basis for the FDA or any other Governmental Authority to invoke the FDA Application Integrity Policy respecting "Fraud, Untrue Statement of Material Facts, Bribery and Illegal Gratuities," set forth in FDA's Compliance Policy Guide Sec. 120.100 (CPG 7150.09) and in 56 Fed. Reg. 46191 (Sept. 11, 1991) or any similar policy or analogous Applicable Laws, in each case, as related to Avexitide.

(i) Neither the Seller Group nor any officers, directors, employees or agents (including any distributor) thereof has been suspended or debarred or convicted of any crime or engaged in any conduct that would reasonably be expected to result in (i) debarment under 21 U.S.C. Section 335a or any similar Applicable Law, (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar Applicable Law, or (iii) exclusion from contracting with any Government Authority, and, to the Knowledge of Seller, no such action is currently contemplated, proposed or pending.

(j) The Seller Group has not been a party to any corporate integrity agreement, monitoring agreement, consent decree, settlement order, deferred prosecution agreement or similar agreement with or imposed by any Governmental Authority arising from violations or alleged violations of Healthcare Laws, and no such agreement is currently pending, or, to Seller's Knowledge, threatened.

(k) The Seller Group is neither subject to, nor has received written notice of, any criminal, injunctive, seizure or civil penalty actions begun or, to Seller's Knowledge, threatened by any Governmental Authority against the Seller Group, in each case relating to Avexitide.

(l) The Seller Group has an operational health care compliance program that: (i) governs all employees, agents, and contractors, (ii) is consistent with the standards and guidance promulgated by the Department of Health and Human Services Office of Inspector General and the Department of Justice, and the U.S. Federal Sentencing Guidelines for effective compliance programs, (iii) complies with the Pharmaceutical Research and Manufacturers of America Code on Interactions with Healthcare Professionals and Principles on Conduct of Clinical Trials, and (iv) addresses compliance with applicable Healthcare Laws. The Seller Group operates in compliance with such health care compliance program.

3.7 **Permits.** To the Seller's Knowledge, (i) the Seller Group possess all material Permits required for the operation of the Business as currently conducted (the "**Seller Permits**") and (ii) no member of the Seller Group has received as of the Effective Date any written notice of any cancellation, suspension, revocation, invalidation or non-renewal of any Permit since the Petition Date.

3.8 **Litigation.**

(a) There are no Actions pending or, to the Seller's Knowledge, threatened in writing, against any member of the Seller Group that would reasonably be expected to have an adverse effect on the Transferred Assets after the entry of the Sale Order, Seller's performance of any of its obligations under this Agreement or any Related Documents, or the consummation of the Transactions, or the issuance by the Bankruptcy Court of the Sale Order (including any provision of the Sale Order approving the Transactions contemplated by this Agreement free and clear of any liens, claims, encumbrances or interests pursuant to section 363(f) of the Bankruptcy Code (the "Free and Clear Provision")) if determined adversely. There is

no, and in the past three (3) years there has not been, any Action to which any member of the Seller Group or any director, officer or employee of any member of the Seller Group (in their capacity as such) is a party, or to the Seller's Knowledge, threatened in writing that would reasonably be expected to adversely affect the Transferred Assets, or impose additional obligations on the Purchaser after Closing, in each case with respect to the Transferred Assets or Assumed Liabilities.

(b) No Order has been issued and is in effect that is applicable to any member of the Seller Group or the Transferred Assets, nor any unsatisfied judgments or awards against or that would reasonably be expected to adversely affect the Transferred Assets.

3.9 **Real Property.** The Seller Group does not own any real property.

3.10 **Assigned Contracts.**

(a) With respect to the Assigned Contracts, (i) except subject to 11 U.S.C. § 365(e)(1), no member of the Seller Group has received any written notice of any breach or default or event that (with due notice or lapse of time or both) would constitute a breach or default by the applicable member of the Seller Group under any Assigned Contract, other than defaults that have been cured or waived in writing, (ii) to the Seller's Knowledge, each Assigned Contract is a legal, valid and binding obligation of the applicable member of the Seller Group and is in full force and effect (except to the extent subject to, and limited by, the Enforceability Exceptions), (iii) to the Seller's Knowledge, no other party to any Assigned Contract is (with or without the lapse of time or the giving of written notice, or both) in breach of or in default under any Assigned Contract and (iv) to the Seller's Knowledge, no member of the Seller Group has provided or received any notice of any intention to terminate any Assigned Contract. The Seller has made available to Purchaser true, correct and complete copies of each of the Assigned Contracts listed on Schedule 2.1(b), together with all amendments thereto.

(b) There are no issued, outstanding or unpaid invoices or other amounts due by any member of the Seller Group to the Trustees of the University of Pennsylvania and the Children's Hospital of Philadelphia ("**Penn**") pursuant that certain License Agreement by and between the Seller and Penn, dated as of May 10, 2019 (the "**Penn License**"). The Seller has cured all allegations of breach alleged by Penn pursuant to that certain Notice of Default under the License Agreement, dated as of April 24, 2024, that are related to payments, and the Seller has paid all amounts due and payable to Penn under the Penn License, including all outstanding invoices issued under the Penn License, including invoice number 240418-L2016-001 and 240315-L2016-002. To the Seller's Knowledge, no member of the Seller Group has received notice of default, breach, noncompliance, requests to cure, or any intention to terminate the Penn License following payment of such invoices, and to the Seller's Knowledge, there are no facts or circumstances that would give rise to any right of termination or cancellation under the Penn License.

(c) No member of the Seller Group has received any written notice of any allegations of default, breach, noncompliance, or requests to cure under the Stanford License Agreement, or any notice of termination or intent to terminate the Stanford License Agreement.

3.11 **Financial Statements.** The Seller's financial statements included in the Seller's Annual Report on Form 10-K filed with the United States Securities and Exchange Commission (the "**SEC**") on April 8, 2024 (the "**Seller Financial Statements**") have been prepared in accordance with GAAP (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, except as permitted by the SEC on Form 10-K under the Securities and Exchange Act of 1934, as amended, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments), have been prepared on a consistent basis throughout the periods covered thereby and presents fairly in all respects the financial condition of the Seller as of such dates and the results

of operations of Seller for such periods, and are consistent with the books and records of Seller (which books and records are correct and complete in all material respects).

3.12 **Absence of Material Developments.** Except as disclosed on Schedule 3.12, since the Petition Date, there has occurred no fact, event, condition, change or circumstance which has had or would reasonably be expected to have a Material Adverse Effect.

3.13 **Customers and Suppliers.** No supplier has or has threatened to stop or decrease the rate of, or as a result of the Bankruptcy Cases or the Transactions, supplying materials, products or services to the Business.

3.14 **Intellectual Property.**

(a) (i) A true, correct and complete list of all Intellectual Property Registrations included in the Owned Intellectual Property Assets is set forth on Schedule 3.14(a)(i), including the patents, registered Trademarks and domain names pertaining to Avexitide that are owned by Seller or its Affiliates and (ii) a true, correct and complete list of all Intellectual Property Registrations included in the Business Intellectual Property that are exclusively otherwise licensed to any member of the Seller Group is set forth on Schedule 3.14(a)(ii). Each of the Intellectual Property Registrations included in the Owned Intellectual Property Assets or Business Intellectual Property is, to the Seller's Knowledge, valid, subsisting, and enforceable. To the Seller's Knowledge, all items of Intellectual Property Registrations included in the Owned Intellectual Property Assets correctly name all inventors thereof.

(b) A member of the Seller Group exclusively owns all rights, title and interests in and to each of the Owned Intellectual Property Assets, free and clear of all Liens (other than Permitted Liens). Except as set forth on Schedule 3.14(b), no member of the Seller Group is a party to, or bound by, (i) any license, option, royalty agreement, or other agreement relating to the use of any material Business Intellectual Property (other than non-exclusive licenses granted by a Third Party to a member of the Seller Group for commercially available, unmodified, off-the-shelf software licensed for aggregate annual fees of less than \$50,000), or (ii) agreements pursuant to which a member of the Seller Group settled any action, litigation, suit or other judicial or administrative proceeding, claim, assertion, or threat with respect to Intellectual Property, including settlement agreements, coexistence agreements, and consent agreements (collectively, (i) and (ii), an "**IP Agreement**"). Following the Closing, except as set forth on Schedule 3.14(b), no Owned Intellectual Property Asset will be subject to any IP Agreement. The consummation of the Transactions will not result in the grant of any right or license to any Third Party of any Intellectual Property that is owned by or exclusively licensed to any member of the Seller Group and would reasonably be expected to be material to the Transferred Assets and the Assumed Liabilities, taken as a whole.

(c) No current or former Affiliate, partner, director, stockholder, officer, member, manager, employee, consultant or contractor of any member of the Seller Group will, after giving effect to the Transactions, own, license or retain any Business Intellectual Property.

(d) All material Intellectual Property Registrations included in the Owned Intellectual Property Assets or otherwise exclusively licensed to any member of the Seller Group and included in the Business Intellectual Property will remain pending or in full force and effect and have not expired or been abandoned or cancelled. No interference, opposition, reissue, reexamination, or other proceeding is or has been pending or, to the Seller's Knowledge, threatened, in which the scope, validity, or enforceability of any Owned Intellectual Property Assets or Intellectual Property exclusively licensed to any member of the Seller Group and included in the Business Intellectual Property is being, or has been, challenged. To the Seller's Knowledge, with respect to the Owned Intellectual Property Assets or other Business Intellectual Property whereby a member of the Seller Group controls the prosecution or has any payment obligations

thereunder, Schedule 3.14(d) sets forth an itemized list of all patent office actions and fees due on or before October 1, 2024, along with their applicable first due dates and any available extended due dates (including any unpaid maintenance fees, annuities, renewal, or other fees).

(e) The Owned Intellectual Property Assets, together with the Intellectual Property licensed to the Seller Group under the Assigned Contracts, constitute all of the Intellectual Property, whether registered or applied for, used by the Seller Group in the conduct of the Business as conducted by Seller Group as of the date hereof.

(f) The Transferred Assets are not subject to the requirements of the Bayh-Dole Act, 35 USC 200-212 and 37 CFR 401.

(g) In the past three (3) years, to the Seller's Knowledge, no member of the Seller Group, nor the Seller's conduct of the Business has infringed, misappropriated or otherwise violated in any material respect any Person's Intellectual Property. No Actions are pending or threatened in writing against any member of the Seller Group and. In the past three (3) years, no member of the Seller Group has received any written notice or claim alleging that any member of the Seller Group is infringing, misappropriating, or otherwise violating the Intellectual Property rights of any Person.

(h) In the past three (3) years, to the Knowledge of the Seller, no Person has infringed, misappropriated or otherwise violated any Owned Intellectual Property Assets or other Business Intellectual Property.

(i) The Seller Group has taken commercially reasonable steps to safeguard and maintain the confidentiality of all know-how and trade secrets that constitute Owned Intellectual Property Assets, and all Persons having access thereto have executed written non-disclosure agreements. Each Person who is or was involved in the creation or development of any Intellectual Property for or on behalf of any member of the Seller Group has signed a written contract containing a present assignment of all such Intellectual Property that was created or developed by such Person in the course of that Person's employment or engagement by the applicable member of the Seller Group.

(j) The Seller Group complies with all Applicable Laws, internal policies and contractual obligations relating to privacy, data protection and cybersecurity.

3.15 Inventories. Except as disclosed on Schedule 3.15, all inventories of each member of the Seller Group (whether or not reflected on the Seller Financial Statements) consist of a quality and quantity usable and, with respect to finished goods, saleable, in the ordinary course of business. No member of the Seller Group is in possession of any goods or inventory not owned by a member of the Seller Group, and the inventories (other than goods in transit) of a member of the Seller Group are located on the premises of the Seller Group. The reserve for obsolescence with respect to inventories is adequate and calculated consistent with past practice. Inventories that were purchased after the date of the balance sheet included in the Seller Financial Statements were purchased in the ordinary course of business at a cost not exceeding market prices prevailing at the time of purchase for items of similar quality and quantity. The quantities of each item of inventory are not excessive, but are reasonable for the continued operation of each member of the Seller Group in the ordinary course of business.

3.16 Taxes.

(a) The Seller Group has duly and timely filed all Tax Returns required to be filed under Applicable Law with respect to Transferred Assets in all jurisdictions in which such Tax Returns are required to be filed. All such Tax Returns are correct and complete in all material respects.

(b) All Taxes owed by the Seller Group (whether or not shown or required to be shown on any Tax Return) with respect to Transferred Assets have been timely paid.

(c) There are no Liens relating to Taxes on any of the Transferred Assets other than Liens for current Taxes not yet due and payable.

(d) No member of the Seller Group has received any written notice of assessment or proposed assessment by any Governmental Authority in connection with any Tax Return with respect to the Transferred Assets that remains unresolved and there is no Action, dispute, examination, judicial proceeding or claim concerning any Taxes of the Seller Group with respect to the Transferred Assets.

(e) The members of the Seller Group have withheld and timely paid over to the appropriate taxing authority all material Taxes with respect to the Transferred Assets or the Business, that are required to have been withheld and paid over in connection with amounts paid or owing to any employee thereof (respectively), independent contractor, equity holder, or other third party and have complied in all material respects with all associated reporting and recordkeeping requirements.

(f) No member of the Seller Group has received any written notice from a jurisdiction where such member of the Seller Group does not currently file a specific Tax Return or pay a specific Tax indicating that such filings may be required or such Tax may be paid in such jurisdiction with respect to the Transferred Assets, or that the Transferred Assets may otherwise be subject to taxation by a taxing authority in such jurisdiction. No member of the Seller Group has a permanent establishment or fixed place of business in any country other than their country of organization attributable to the Transferred Assets.

(g) No member of the Seller Group has waived any statute of limitations in respect of Taxes with respect to the Transferred Assets or agreed to any extension of time with respect to an assessment or deficiency for Taxes with respect to the Transferred Assets, in each case which waiver or extension is currently in force and could have effect after the Closing Date.

(h) No member of the Seller Group is party to any Contract relating to Tax sharing, Tax allocation, Tax indemnity or similar agreement affecting the Transferred Assets or the Business that would, in any manner, bind, obligate or restrict the Purchaser, other than agreements entered into in the ordinary course of business the primary purpose of which was not Taxes. No member of the Seller Group has Liability for the unpaid Taxes of any Person under Treasury Regulation §1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or successor, by contract, or otherwise that would, in any manner, bind, obligate or restrict the Purchaser.

(i) No closing agreements, private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes have been entered into or issued by any taxing authority with or to any member of the Seller Group with respect to the Transferred Assets or the Business that would bind, obligate or restrict the Purchaser.

(j) The members of the Seller Group (i) have timely paid all material amounts of sales and use Taxes relating to the Transferred Assets or the Business required to be paid under all Applicable Laws, (ii) properly collected and remitted all material amounts of sales Taxes relating to the Transferred Assets or the Business required under all Applicable Laws, and (iii) for all sales relating to the Transferred Assets or the Business that are exempt from sales Taxes and that were made without charging or remitting sales or similar Taxes, received and retained any appropriate Tax exemption certificates and other documentation qualifying such sale as exempt.

(k) None of the Transferred Assets is an interest in an entity or other arrangement that is treated as an entity for U.S. federal income Tax purposes.

3.17 **Brokers and Finders.** Except for SSG Advisors, LLC, the Seller has not, directly or indirectly, entered into any agreement with any Person that would obligate the Seller or Purchaser to pay any commission, brokerage fee or “finder’s fee” in connection with the Transactions.

3.18 **No Other Representations or Warranties.** Except for the representations and warranties contained in this ARTICLE 3 and the Related Documents, including any certificate delivered pursuant to this Agreement, the Seller does not, nor do any other Persons on behalf of the Seller, make any other express or implied representation or warranty with respect to itself, the Business, the Transferred Assets or the Assumed Liabilities, or with respect to any other information provided to Purchaser or its representatives, and the Seller disclaims any other representations or warranties, whether made by or on behalf of the Seller or any other Person. The Seller will not, and no other Persons will, have or be subject to any Liability to Purchaser or any other Person resulting from the distribution to Purchaser, or Purchaser’s use of, any such information, including any information, documents, projections, forecasts or other material made available to Purchaser or its representatives in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, the Transactions, or in respect of any other matter or thing whatsoever (electronic or otherwise) or otherwise in expectation of the Transactions.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as disclosed in a document herewith delivered by Purchaser to the Seller (the “**Purchaser Schedules**”), Purchaser hereby makes the representations and warranties contained in this ARTICLE 4 to the Seller.

4.1 **Organization, Good Standing and Other Matters.** Purchaser is duly organized, validly existing and in good standing under the Applicable Laws of its jurisdiction of organization and has all requisite corporate power or other entity power and authority to own its properties and to carry on its business as now being conducted.

4.2 **Authority and Enforceability.** Purchaser has all requisite corporate power or other entity power and authority to execute and deliver this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance of this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party, and the consummation of the Transactions, have been duly authorized and approved by its board of directors (or equivalent governing body) and no other action on the part of Purchaser or its members is necessary to authorize the execution, delivery and performance of this Agreement and the Related Documents by Purchaser and the consummation of the Transactions. This Agreement has been, and each Related Document will be at or prior to Closing, duly executed and delivered by Purchaser and, assuming the due execution and delivery by the other parties hereto or thereto, constitutes or will constitute a valid and binding obligation of Purchaser enforceable against it in accordance with its respective terms, except to the extent that such enforceability may be subject to, and limited by, the Enforceability Exceptions.

4.3 **No Conflict: Required Filings and Consents.** Except (a) such filings as may be required in connection with the Transfer Taxes described in Section 2.10 and (b) as set forth on Schedule 4.3, the execution and delivery of this Agreement and of the Related Documents and the consummation of the Transactions by Purchaser will not (i) violate the provisions of its Organizational Documents, (ii) violate any Applicable Law or Order to which it is subject or by which any of its properties or assets are bound, (iii) require it to obtain any Consent, or give any written notice to, or make any filing with, any Governmental Authority on or prior to the Closing Date, (iv) result in a breach of or constitute a default (with or without due notice or lapse of time or both), give rise to any right of termination, cancellation or

acceleration under, or require the Consent of any Third Party to, any material Contract to which it is a party or (v) result in the imposition or creation of any Lien upon or with respect to any of its assets or properties; excluding from the foregoing clauses (ii) through (v) Consents, approvals, written notices and filings the absence of which, and violations, breaches, defaults, rights of acceleration, cancellation or termination, and Liens, the existence of which would not, individually or in the aggregate, (A) have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or (B) otherwise materially prevent, hinder or delay the consummation of the Transactions.

4.4 **Financing.** Purchaser has, and at the Closing will have, sufficient funds available to pay the Purchase Price in accordance with the terms hereof and any other payments required hereunder and any expenses incurred or required to be paid by Purchaser in connection with the Transactions.

4.5 **Solvency.** Purchaser is not entering into this Agreement with the intent to hinder, delay or defraud either present or future creditors. Immediately after giving effect to all of the Transactions, including the making of the payments contemplated by Section 2.9, and assuming satisfaction of the conditions to Purchaser's obligation to consummate the Transactions as set forth herein, the accuracy of the representations and warranties of Purchaser set forth herein and the performance by Purchaser of its obligations hereunder in all material respects, Purchaser will be Solvent.

4.6 **Litigation.** There is no Action pending or, to Purchaser's Knowledge, formally threatened against Purchaser or involving any of its properties or assets that would be reasonably be expected to (a) have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or (b) otherwise materially prevent, hinder, or delay the consummation of the Transactions.

4.7 **Brokers and Finders.** None of Purchaser or its Affiliates have, directly or indirectly, entered into any agreement with any Person that would obligate the Seller to pay any commission, brokerage fee or "finder's fee" in connection with the Transactions.

4.8 **Investigation and Agreement by Purchaser; Non-Reliance of Purchaser; No Other Representations and Warranties.**

(a) Purchaser acknowledges that it and its representatives have received access to such books and records, facilities, equipment, contracts, and other assets of the Business which it and its representatives have desired or requested to review. Purchaser acknowledges and agrees that it has made its own inquiry and investigation into, and, based thereon, have formed an independent judgment concerning the Seller Group, the Business, the Transferred Assets and the Assumed Liabilities.

(b) Except for the specific representations and warranties expressly made by the Seller in ARTICLE 3 and Related Documents as further limited by the specifically bargained-for exclusive remedies as set forth in ARTICLE 9 of this Agreement Purchaser acknowledges and agrees that (i) the Seller is not making and has not made any representation or warranty, expressed or implied, at law or in equity, in respect of the Business, the Transferred Assets, the Assumed Liabilities, or any of its operations, prospects or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any Liabilities, the prospects of the Business, the effectiveness or the success of any operations, or the accuracy or completeness of any confidential information memoranda, documents, projections, material or other information (financial or otherwise) regarding the Business furnished to Purchaser or its representatives or made available to Purchaser and its representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the Transactions, or in respect of any other matter or thing whatsoever, and (ii) no officer, director, manager, stockholder, agent, advisor, representative or employee of any member of the Seller Group has any authority, express or implied, to make any representations, warranties or agreements not specifically set forth in ARTICLE 3 and subject to the limited remedies herein provided.

(c) Other than the specific representations and warranties expressly set forth in ARTICLE 3 as further limited by the specifically bargained-for exclusive remedies as set forth in ARTICLE 9 of this Agreement, Purchaser specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that the Seller and the Seller's Affiliates have specifically disclaimed and do hereby specifically disclaim, and shall not have or be subject to any Liability for reliance on any such other representation or warranty made by any Person. Purchaser specifically waives any obligation or duty by the Seller or the Seller's Affiliates to make any disclosures of fact not required to be disclosed pursuant to the specific representations and warranties expressly set forth in ARTICLE 3 and disclaim reliance on any information not specifically required to be provided or disclosed pursuant to the specific representations and warranties set forth in ARTICLE 3.

(d) Purchaser is acquiring the Business, the Transferred Assets and the Assumed Liabilities subject only to the specific representations and warranties expressly set forth in ARTICLE 3 as further limited by the specifically bargained-for exclusive remedies as set forth in ARTICLE 9 of this Agreement.

4.9 **No Other Representations or Warranties.** Except for the representations and warranties contained in this ARTICLE 4 or in any of the Related Documents (including any certificate delivered pursuant to this Agreement), neither Purchaser nor any other Person on behalf of Purchaser makes any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to the Seller or its representatives, and Purchaser disclaims any other representations or warranties, whether made by Purchaser or any of its Affiliates, officers, directors, employees, agents or representatives.

ARTICLE 5. BANKRUPTCY COURT MATTERS

5.1 **Competing Transaction.** This Agreement is subject to approval by the Bankruptcy Court and the consideration by the Seller of higher or better competing bids in respect of all or any part of the Transferred Assets (whether in combination with other assets of the Seller Group or otherwise) in accordance with the terms of the Bid Procedures Order (each, a "**Competing Bid**"). From the Effective Date (and any prior time) and until the Closing, the Seller is permitted to, and to cause its representatives to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates and representatives) in connection with any sale or other disposition of the Transferred Assets. In addition, the Seller shall have the authority to respond to any inquiries or offers to purchase all or any part of the Transferred Assets (whether in combination with other assets of the Seller Group or otherwise) and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Bid Procedures Order or other Applicable Law, including supplying information relating to the Business and the assets of the Seller Group to prospective purchasers.

5.2 **Bankruptcy Court Filings.**

(a) Subject to its right to pursue a Competing Bid in accordance with the Bid Procedures Order, the Seller shall diligently pursue the entry by the Bankruptcy Court of the Sale Order, which Sale Order shall provide for the transfer of the Transferred Assets and the Assumed Liabilities to Purchaser free from all successor or transferee Liability to the fullest extent permitted by Section 363 of the Bankruptcy Code. The Seller shall comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the Bankruptcy Court in obtaining the entry of the Sale Order. The Seller further covenants and agrees that, after entry by the Bankruptcy Court of the Sale Order, and provided, that the Sale Order becomes a Final Order, the terms of any other proposed order submitted by the Seller to the Bankruptcy Court shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or

performance of the Transactions. Purchaser agrees that it will promptly take such actions as are reasonably requested by the Seller to assist in obtaining entry of the Sale Order, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code. In the event that the entry of the Sale Order shall be appealed, the Seller and Purchaser shall use their respective commercially reasonable efforts to defend such appeal.

(b) Seller shall use commercially reasonable efforts to provide Purchaser with a reasonable opportunity to review and comment upon all motions, applications, and supporting papers relating to the Transactions prepared by the Seller or any Affiliates (including forms of orders and written notices to interested parties) prior to the filing thereof in the Bankruptcy Cases; *provided* that the foregoing shall not require the Seller to take any action that would, in the Seller’s reasonable business judgment, threaten to harm the overall value to be produced by the Seller’s in-court sale process.

(c) The form of Sale Order submitted by the Seller to the Bankruptcy Court for approval must be reasonably satisfactory in form and substance to the Purchaser.

(d) The Seller shall not seek any modification to the Bid Procedures, Bid Procedures Order, or Sale Order by the Bankruptcy Court that are materially adverse to the Purchaser without the prior written consent of Purchaser, which such consent shall not be unreasonably withheld.

(e) Each of Purchaser and the Seller will promptly take such actions as are reasonably requested by the other party to assist in obtaining entry of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by Seller of its obligations under this Agreement and demonstrating that Purchaser is a good faith buyer under section 363(m) of the Bankruptcy Code.

(f) The Seller shall use commercially reasonable efforts to provide appropriate written notice of the hearings on the Sale Order to all Persons entitled to written notice, including, but not limited to, all Persons that have asserted Liens on the Transferred Assets, all parties to the Assigned Contracts and all taxing authorities in jurisdictions applicable to Seller and as otherwise required by the Bankruptcy Code and bankruptcy rules.

(g) Within five (5) Business Days of the Auction (subject to the Bankruptcy Court’s availability), if Purchaser is the winning bidder at the Auction (or if there is no Auction), the Seller will seek entry of the Sale Order by the Bankruptcy Court.

(h) The Seller and Purchaser agree that, in the event that Purchaser is not the winning bidder at an auction undertaken pursuant to the Bid Procedures Order (the “**Auction**”), and (i) Purchaser submits the Back-Up Bid at the Auction or (ii) the terms of this Agreement are deemed to constitute a Back-Up Bid, then Purchaser shall be obligated to promptly consummate the Transactions upon the terms and conditions as set forth herein, including the payment of the Purchase Price as the same may be increased by Purchaser at the Auction; *provided* that, the Seller gives written notice to Purchaser on or before the Back-Up Termination Date, stating that the Seller (A) failed to consummate the sale of the Transferred Assets with the winning bidder, and (B) terminated the purchase agreement with the winning bidder.

5.3 Assumption of Assigned Contracts.

(a) On June 4, 2024, the Seller filed (or cause to be filed) a written notice of assumption (the “**Assumption Notice**”) with the Bankruptcy Court and serve such written notice on each counterparty to a Designated Contract (as defined below) listed thereon. The Assumption Notice shall identify all Designated Contracts that the Seller and Purchaser believe may be assumed and assigned in connection with the sale of the Transferred Assets and set forth a good faith estimate of the amount of Cure Costs applicable to each such Assigned Contract (and if no Cure Cost is estimated to be applicable with

respect to any particular Assigned Contract, the amount of such Cure Cost designated for such Assigned Contract shall be "\$0.00"). In accordance with the Bid Procedures Order, the Seller reserves the right to supplement such list of Designated Contracts and provide additional written notice of assumption, and to remove a Contract from the list of Designated Contracts, up to entry of Sale Order.

(b) On or before the date that is two (2) Business Days before the Closing Date (the "**Designation Deadline**"), Purchaser shall provide to the Seller a list of those Contracts that Purchaser elects to have assumed and assigned to Purchaser on the Closing Date (the "**Designated Contracts**"). Purchaser shall be entitled to remove certain Contracts from the list of Designated Contracts at any time prior to the Designation Deadline by providing the Seller written notice of such removal. In the event that Purchaser removes any of such Contracts from such list, the Seller will provide the relevant counterparty written notice that the applicable Contract is no longer identified as a Designated Contract. For the avoidance of doubt, only those executory Contracts that remain identified as Designated Contracts as of the Closing Date will constitute Assigned Contracts and will be assumed by the Seller and assigned to Purchaser pursuant to the Sale Order.

(c) Notwithstanding any provision in this Agreement to the contrary, a Contract shall not be a Designated Contract hereunder and shall not be assumed and assigned to Purchaser to the extent that such Contract is (i) deemed rejected under Section 365 of the Bankruptcy Code, (ii) the subject of an objection to assignment or assumption or requires the consent of any Governmental Authority or other third party (other than, and in addition to, the Bankruptcy Court) in order to permit the assumption and assignment by the applicable Seller to Purchaser of such Contract pursuant to Section 365 of the Bankruptcy Code, and such objection has not been resolved or such consent has not been obtained prior to the thirtieth day following the Closing Date (as such period may be extended by mutual agreement of Seller and Purchaser), or (iii) is terminated by any party thereto other than Seller, or terminates or expires by its terms, on or prior to such time as it is to be assumed and assigned to Purchaser as an Assigned Contract hereunder and is not continued or otherwise extended upon assignment. In no event shall the failure to assign to Purchaser any Contract in accordance with subsections (i) through (iii) above reduce the Purchase Price payable to Seller or constitute a failure to satisfy the conditions precedent of Seller under Section 8.3.

(d) Subject to the terms of Section 2.5, Section 2.8, Section 5.3(a) and Section 5.3(b), Purchaser shall make provision for the payment of the Determined Cure Costs in cash at Closing in accordance with the Sale Order.

(e) Notwithstanding any provision in this Agreement to the contrary, from and after the date of the Assumption Notice through the Closing Date, the Seller will not reject or take any action (or fail to take any action that would result in rejection by operation of Applicable Law) to reject, withdraw, repudiate or disclaim any Contract unless (i) Purchaser has provided its prior written consent; or (ii) Purchaser has removed such Contract from the list of Designated Contracts.

ARTICLE 6. PRE-CLOSING COVENANTS

6.1 **Conduct of Business.** Except (a) as set forth on Schedule 6.1, (b) as may be approved by Purchaser in writing (which approval will not be unreasonably withheld, delayed or conditioned), (c) for actions taken or omitted to be taken by any member of the Seller Group in response to any Public Health Measure, (d) as is otherwise permitted, contemplated or required by this Agreement, or (e) as required by Applicable Laws or by order of the Bankruptcy Court, from the Effective Date through the earlier of the Closing Date or the termination of this Agreement in accordance with its terms:

(a) The Seller Group shall use their commercially reasonable efforts to carry on the Business in all material respects in the ordinary course of business taking into account the contemplation, commencement and pendency of the Bankruptcy Cases; and

(b) The Seller shall not, and shall cause its Affiliates not to:

(i) sell, license, abandon or otherwise dispose of any asset or property constituting Transferred Assets other than, in each case, in the ordinary course of business consistent with past practices or for the purpose of disposing of obsolete or worthless assets;

(ii) abandon, cancel, fail to renew, or permit to lapse any Owned Intellectual Property Assets other than pursuant to expiration of any such Intellectual Property at the end of its statutory life;

(iii) except in the ordinary course of business, acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of any business or any corporation, partnership or other business organization or otherwise acquire any assets (except inventory), that would constitute Transferred Assets, except for the acquisition of assets in the ordinary course of business consistent with past practices;

(iv) grant any Lien on any of the Transferred Assets;

(v) waive, release, assign, institute, compromise, or settle any pending or threatened Action against, or related to, any Seller Group member, the Business, the Transferred Assets, or the Assumed Liabilities and that would result in an Assumed Liability;

(vi) terminate, amend, supplement, modify or waive any provision of, or accelerate any rights, benefits or obligations under, any Assigned Contract, except any such action in the ordinary course of business or the expiration in accordance with its term;

(vii) change its present accounting methods or principles in any material respect, except as required by GAAP or Applicable Law;

(viii) make or change any Tax election, change an annual accounting period, adopt or change any Tax accounting method, file any amended Tax Return, enter into any closing agreement, settle any material Tax claim or assessment or surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitations period with respect to Taxes, fail to pay any Taxes (including estimated Taxes) when due and payable, or enter into any Tax sharing, indemnity or similar agreement allocating tax liability, other than in the ordinary course of business or as required by the Code or Applicable Law, and in each case related to the Taxes of the Business or the Transferred Assets; or

(ix) authorize any of, or commit or agree, in writing or otherwise, to take any of, the foregoing actions in this Section 6.1(b).

(c) Notwithstanding anything to the contrary, nothing contained in this Agreement shall give Purchaser or any of its Affiliates, directly or indirectly, any right to control or direct the Business, assets and operations prior to the Closing. Prior to the Closing, the Seller shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Affiliates' respective Business, assets and operations.

6.2 Access to Information; Confidentiality.

(a) From the Effective Date until the earlier of the Closing Date and the termination of this Agreement, the Seller shall grant Purchaser and its representatives (at Purchaser's sole cost and expense) reasonable access, during normal business hours and upon reasonable written notice (and in the event of a facility visit request, at least twenty-four (24) hours prior written notice), and subject to any limitations resulting from any Public Health Measures, to the personnel, facilities, book and records of the Seller Group related to the Business or the Transferred Assets that are in the possession or under the control of the Seller Group; *provided, however*, that (i) all requests for access shall be directed to such person(s) as the Seller may designate in writing from time to time (the "**Seller Access Contact**"), (ii) such activities do not unreasonably interfere with the ongoing business or operations of the Seller Group, (iii) the Seller shall have the right to have one or more of its representatives present at all times during any visits, examinations,

discussions or contacts contemplated by this Section 6.2(a), (iv) such access or related activities would not cause a material breach of any agreement to which any Seller is a party, (v) no Personal Information shall be disclosed or used other than in compliance with Information Privacy and Security Laws and (vi) nothing herein shall require any member of the Seller Group or their representatives to furnish to Purchaser or provide Purchaser with access to information that (A) is subject to an attorney-client or an attorney work-product privilege, (B) legal counsel for the Seller Group reasonably concludes may give rise to antitrust or competition law issues or violate a protective order or otherwise may not be disclosed pursuant to Applicable Law (including any Public Health Measure) or (C) would cause significant competitive harm to the Seller Group if the Transactions are not consummated.

(b) Notwithstanding anything to the contrary contained in this Agreement, from the Effective Date until the Closing Date, Purchaser shall not, and shall cause its representatives not to, have any contact or discussions concerning the Transaction with any existing lender, borrower, creditor, or guarantor of any Seller, in each case, without the prior written consent of the Seller (which consent may be withheld in the Seller's sole discretion and, if given, may be conditioned on the Seller or his or her designee having the right to participate in any meeting or discussion).

(c) Any information provided to or obtained by Purchaser or its representatives, including pursuant to this Section 6.2 is confidential information and subject to the terms of, and the restrictions contained in, the Confidentiality Agreement. Purchaser agrees to be bound by and comply with the provisions set forth in the Confidentiality Agreement as if such provisions were set forth herein, and such provisions are hereby incorporated herein by reference. Effective upon (and only upon) the Closing, the Confidentiality Agreement shall automatically terminate and none of the parties thereto shall have any further Liability or obligation thereunder except with respect to any confidential information provided to or obtained by Purchaser or its representatives concerning the Seller Group or the Business, which information shall remain subject to the terms and conditions of the Confidentiality Agreement after the Closing Date and all such information provided to or obtained by Purchaser or its representatives related to assigned Documents from the Seller Group or the Business will be deemed the confidential information of the Purchaser from and after the Closing, and the Confidentiality Agreement will remain in full force and effect as to all such information. If this Agreement is terminated prior to Closing for any reason, the duration of the confidentiality of the Confidentiality Agreement shall be deemed extended, without any further action by the parties, for a period of time equal to the period of time elapsed between the date such Confidentiality Agreement was initially signed and the date of termination of this Agreement.

6.3 Efforts to Consummate. Except as otherwise provided in this Agreement, each of the parties hereto shall use its reasonable best efforts to perform its obligations hereunder and cause the Closing to occur as soon as possible after the Effective Date, including satisfying the conditions precedent set forth in ARTICLE 8 applicable to such party including (a) defending against any Actions, judicial or administrative, challenging this Agreement or the consummation of the Transactions, (b) seeking to have any preliminary injunction, temporary restraining order, stay or other legal restraint or prohibition entered or imposed by any court or other Governmental Authority that is not yet final and nonappealable vacated or reversed, and (c) and executing any additional instruments reasonably requested by the other party hereto necessary to carry out the Transactions, perfect or evince the assignment of the Transferred Assets, and to fully carry out the purposes of this Agreement; *provided, however*, that, for purposes of "reasonable best efforts" standard as required by this Section 6.3, Section 6.4 or Section 6.5, neither the Seller nor its Affiliates or representatives shall be required to expend any money to remedy any breach of any representation or warranty hereunder, to commence any Action, to waive or surrender any right, to modify any agreement (including any Assigned Contract) or to provide financing to Purchaser for the consummation of the Transactions.

6.4 Notices and Consents. Reasonably promptly following the execution of this Agreement, the Seller will give, or cause to be given, applicable notices to Third Parties and thereafter will use

reasonable best efforts (as limited by Section 6.3) to obtain the third-party consents set forth on Schedule 6.4; *provided, however*, that no representation, warranty, covenant or agreement of the Seller shall be breached or deemed breached, and no condition shall be deemed not satisfied, as a result of (a) the failure to obtain any such third-party consent (unless such consent is part of a closing condition of Seller), (b) any termination of a Contract as a result of the failure to obtain such third-party consent (unless such consent is part of a closing condition of Seller) or (c) any Action commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any such consent or any such termination; *provided, further*, that nothing in this Section 6.4 shall require the Seller to expend any money or grant any concessions to obtain any such third-party consent (unless Purchaser provides the funds for or reimburses the Seller for such payment).

6.5 Regulatory Matters.

(a) Purchaser and the Seller will establish a mutually acceptable and prompt communication and interaction process to ensure the orderly transfer of the IND for Avexitide and other similar regulatory approval and authorization documents for jurisdictions outside of the United States. Promptly after Closing, the parties shall file with the FDA, and any other relevant Governmental Authority all information required in order to transfer the IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States from the Seller to Purchaser, including the information required pursuant to 21 C.F.R. § 314.72, or any successor regulation thereto, any authorization letters or notices, and letters of acceptance. Seller shall file the information required of a former owner, and Purchaser shall file the information required of a new owner, at each party's own expense. Both Purchaser and the Seller also agree to use all commercially reasonable efforts to take any actions required by the Governmental Authority or other government/health agencies to effect the transfer of the IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States from the Seller to Purchaser, and hereby further agree to cooperate with each other in order to effectuate the foregoing transfer of Avexitide. The parties agree to use all commercially reasonable efforts to complete the filing of the transfer of the IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States within ten (10) days from the Closing Date. The Seller may retain an archival copy of the IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States, including supplements and records that are required to be kept under 21 C.F.R. § 314.81 or other similar regulation.

(b) From and after the Closing Date until the Seller is dissolved, the Seller shall cooperate with Purchaser in preparing, disclosing and providing any relevant records, reports, responses or any other documentation that are required to be made, maintained and reported pursuant to the Governmental Authority. The parties agree to use their commercially reasonable efforts to take any other actions required by the FDA or any other Governmental Authority to effect the transaction.

(c) Until the completion of the transfer of Avexitide to Purchaser, the Seller shall take all reasonably necessary or advisable actions to maintain the relevant IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States.

6.6 **Public Announcements.** Between the Effective Date and the Closing Date, except to the extent required by any Applicable Law (including applicable securities regulations) or Action (including the Bankruptcy Cases), neither Purchaser nor the Seller shall, and Purchaser and the Seller shall cause their respective Affiliates and representatives not to, directly or indirectly, issue any press release or public announcement of any kind without the prior written consent of the other party hereto; provided, however, that the Seller and its Affiliates may disclose the Transactions from time to time to their respective employees, customers, suppliers, and other business relations, in each case, that are subject to a valid and enforceable non-disclosure agreement, as the Seller may reasonably determine is necessary to comply with Applicable Law or the requirements of this Agreement. Purchaser and the Seller shall cooperate in good faith to prepare a joint press release to be issued on the Closing Date, the terms of which shall be agreed

upon by the parties. Notwithstanding any provision to the contrary in this Section 6.6, the Purchaser may make public statements (a) in response to specific questions by the press, analysts, investors or those attending industry conferences or financial analyst conference calls, so long as any such statements do not reveal material, non-public information regarding the other party hereto or the Transactions or (b) to the extent that such public statements disclose information already available in the public domain (except to the extent such information is available in the public domain solely as a result of a violation of the terms of this Agreement).

ARTICLE 7. POST-CLOSING COVENANTS

7.1 **Access to Information; Books and Records.** From and after the Closing, Purchaser and its Affiliates shall, at Seller's sole cost and expense, afford the Seller Group and their respective representatives reasonable access, during normal business hours, upon reasonable advance written notice and under reasonable circumstances, to the books and records of Purchaser, solely to the extent such books and records relate to the Transferred Assets, and shall permit the Seller Group and their respective representatives to examine and copy such books and records to the extent necessary for any regulatory, legal, or tax audit, investigation, inquiry, or requirement of Seller in connection with any claims against Seller or its Affiliates related to the Transactions or compliance by Seller with its obligations under this Agreement or any Related Documents; *provided, however*, that nothing in this Section 7.1 shall require Purchaser or its Affiliates to furnish to the Seller Group or their respective representatives any material that is subject to an attorney-client or solicitor-client privilege or an attorney or solicitor work-product privilege or which may not be disclosed pursuant to Applicable Law. For a period of three (3) years following the Closing Date, or such longer period as may be required by Applicable Law or necessitated by applicable statutes of limitations, Purchaser shall, and shall cause its Affiliates to, maintain all such books and records and shall not destroy, alter or otherwise dispose of any such books and records.

7.2 **Post-Closing Receipt and Possession of Assets.** In the event that, after the Closing Date, Purchaser receives or otherwise is in possession of any other Excluded Asset, Purchaser shall promptly notify the Seller of its receipt or possession of such other Excluded Asset and transfer, at the Seller's expense, such Excluded Asset to the Seller or its applicable designee. In the event that, after the Closing Date, the Seller, its Affiliates, or its applicable successor or assign receives or otherwise is in possession of any other Transferred Asset, the Seller shall promptly notify Purchaser of its receipt or possession of such other Transferred Asset and transfer, at Purchaser's expense (unless the Seller was required to transfer such Transferred Asset to Purchaser at Closing, in which case, and without limitation of any other remedies available to Purchaser, such transfer will be at the Seller's expense), such Transferred Asset to Purchaser.

7.3 **Tax Matters.**

- (a) Apportionment of Ad Valorem Taxes
 - (i) All ad valorem, real property, personal property or other similar Taxes with respect to the Transferred Assets that relate to any Straddle Period (such Taxes collectively the "**Apportioned Taxes**") shall be apportioned between Seller and Purchaser as follows: (a) the Seller shall be apportioned an amount equal to the total amount of such Apportioned Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending on the Closing Date and the denominator of which is the number of total days in such Straddle Period and (b) the Purchaser shall be apportioned an amount equal to the excess of the total amount of such Apportioned Taxes for the entire Straddle Period over the amount determined in clause (a) hereof.

- (ii) Apportioned Taxes will be timely paid, and all applicable Tax Returns will be filed by Purchaser as provided by Applicable Law. Purchaser will be entitled to reimbursement from the Seller in accordance with Section 7.3(a)(i). Upon payment of Apportioned Taxes, the Purchaser will present a statement to Seller setting forth the amount of the reimbursement to which the Purchaser is entitled under Section 7.3(a)(i) together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed.
- (iii) Subject to the foregoing, for all other purposes of this Agreement, the amount of any Taxes of the Business or with respect to the Transferred Assets not based upon or measured by income, activities, events, the level of any item, gain, receipts, proceeds, profits or similar items for the Pre-Closing Tax Period portion of a Straddle Period will be deemed to be the amount of such Taxes for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in the Straddle Period. The Pre-Closing Tax Period portion of any other Taxes for a Straddle Period will be determined based on an interim closing of the books as of the close of business on the Closing Date; provided, however, that any item determined on an annual or periodic basis (such as deductions for depreciation or real estate Taxes) shall be apportioned on a daily basis.

(b) After the Closing Date, Purchaser and Seller shall furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance (including access to books, records, work papers and Tax Returns for Pre-Closing Tax Periods) relating to the Business or the Transferred Assets as is reasonably necessary for the preparation of any Tax Return, claim for refund or audit, the making of any election related to Taxes, and the prosecution or defense of any claim, suit or proceeding relating to any proposed Tax adjustment. Upon reasonable request and with reasonable written notice, Seller and Purchaser shall make its employees and facilities available on a mutually convenient basis to provide reasonable explanation of any documents or information provided hereunder. The other party hereto shall promptly (and in no event later than thirty (30) days after receipt of the request) provide the reasonably requested information. The requesting party shall indemnify the other party for any out-of-pocket expenses incurred by such party in connection with providing any information or documentation pursuant to this Section 7.3(b). Any information obtained under this Section 7.3(b) shall be kept confidential, except as otherwise reasonably may be necessary in connection with the filing of Tax Returns or claims for refund or in conducting any Tax audit, dispute or contest.

(c) All Tax sharing agreements or similar agreements and all powers of attorney that relate in any way to the Transferred Assets or the Business will be terminated effective as of the Closing and, after the Closing, no such agreement or power of attorney will have any effect on the Transferred Assets, and Purchaser and its affiliates shall not have any Liability with respect thereto.

ARTICLE 8. CONDITIONS PRECEDENT

8.1 **Conditions to Each Party's Obligation.** The respective obligations of the parties hereto to effect the Transactions are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by the Seller and Purchaser), at or prior to the Closing, of the following conditions:

(a) **No Injunctions or Restraints.** No Order or Applicable Law preventing the consummation of the Transactions shall be in effect.

(b) Sale Order. The Bankruptcy Court shall have entered the Sale Order, which shall provide for the sale of the Transferred Assets free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. § 363, and such Sale Order shall be a Final Order (unless such Final Order requirement is waived by the Seller and Purchaser in their respective sole discretion).

8.2 **Conditions to Obligations of Purchaser.** The obligations of Purchaser to effect the Transactions is subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by Purchaser), at or prior to the Closing, of the following conditions:

(a) Representations and Warranties. (i) Each of the representations and warranties of the Seller set forth in ARTICLE 3 shall be true and correct in all respects (without giving effect to any qualifications or limitations as to “materiality”, “Material Adverse Effect” or words of similar import set forth therein) as of the date hereof and as of the Closing as though made at and as of such time (other than such representations and warranties as are made as of a specified date, which shall be so true and correct as of such date), except where the failure of such representations and warranties to be so true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (ii) the representations and warranties set forth in Section 3.1, Section 3.2, Section 3.4, Section 3.14 and Section 3.17 (collectively, the “**Fundamental Representations**”) shall be true and correct in all respects as of the hereof and as of the Closing Date as though made on and as of such time, except that such Fundamental Representations that are made as of a specified date need be true and correct in all respects only as of such date.

(b) Performance of Covenants and Obligations. The Seller shall have performed or complied in all material respects with all obligations and covenants required to have been performed or complied with by it under this Agreement at or prior to the Closing, except to the extent of changes or developments contemplated expressly by the terms of this Agreement or caused by the Transactions.

(c) Third Party Consents. The Seller shall have received written consent from the applicable counterparty to each of the Assigned Contracts set forth in Schedule 8.2(c) (collectively, the “Third Party Consents”), in form and substance reasonably satisfactory to Purchaser, and executed counterparts thereof shall have been delivered to Purchaser at or prior to the Closing.

(d) Closing Deliverables. The Seller shall have delivered to Purchaser the closing deliveries required to be delivered by the Seller pursuant to Section 2.8(a), Section 2.8(b), Section 2.8(c), Section 2.8(d), and Section 2.8(f). The Escrow Agent shall have delivered its duly executed signature page of the Escrow Agreement to the Purchaser pursuant to Section 2.8(c).

8.3 **Conditions to Obligations of the Seller.** The obligation of the Seller to effect the Transactions is subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by the Seller), at or prior to the Closing, of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of Purchaser set forth in ARTICLE 4 shall be true and correct in all respects as of the Closing as though made at and as of such time (other than such representations and warranties as are made as of an earlier date, which shall be so true and correct as of such date), except where the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, have a material adverse effect on the ability of Purchaser to consummate Transactions.

(b) Performance of Covenants and Obligations of Purchaser. Purchaser shall have performed or complied in all material respects with all obligations and covenants required to have been performed or complied with by it under this Agreement at or prior to the Closing, except to the extent of changes or developments contemplated by the terms of this Agreement or caused by the Transactions.

(c) Closing Deliverables. Purchaser shall have delivered to the Seller the closing deliveries required to be delivered by Purchaser pursuant to Section 2.8(a), Section 2.8(b), Section 2.8(c),

Section 2.8(d), and Section 2.8(e). The Escrow Agent shall have delivered its duly executed signature page of the Escrow Agreement to the Seller pursuant to Section 2.8(c).

8.4 **Waiver of Condition; Frustration of Conditions.** All conditions to the Closing shall be deemed to have been satisfied or waived from and after the Closing. Neither Purchaser nor the Seller may rely on the failure of any condition set forth in this ARTICLE 8, as applicable, to be satisfied if such failure was caused by such party's failure to consummate the Transactions.

ARTICLE 9. TERMINATION

9.1 **Events of Termination.** Notwithstanding any provision to the contrary set forth herein, this Agreement may be terminated and the Transactions may be abandoned at any time prior to the Closing:

- (a) by written consent of Purchaser and the Seller;
- (b) automatically, (i) upon the earlier of (A) the consummation of a sale or other disposition of all or substantially all of the Transferred Assets to a Person other than Purchaser (each, an "**Alternate Transaction**"), or (B) if Purchaser's bid has been selected as the Back-Up Bid for the Transferred Assets, 45 days after the conclusion of the Auction (or, if no Auction is held, 45 days after the date on which the Seller files a notice of cancellation of Auction) or (ii) if Purchaser's bid was selected as neither the winning bid nor the Back-Up Bid for the Transferred Assets, two (2) business days after entry of an order approving the winning bid and (if applicable) the Back-Up Bid for the Transferred Assets.
- (c) by Purchaser or the Seller by written notice to Purchaser or the Seller from the other, if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;
- (d) by Purchaser if the Seller (i) withdraws the motion for the Sale Order, or publicly announces its intention to withdraw such motion, (ii) moves to voluntarily dismiss the Bankruptcy Cases, (iii) moves for conversion of the Bankruptcy Cases to Chapter 7 of the Bankruptcy Code, or (iv) moves for appointment of an examiner with expanded powers pursuant to Section 1104 of the Bankruptcy Code or a trustee in the Bankruptcy Cases;
- (e) by Purchaser, by written notice from Purchaser to the Seller, if there has been a breach or inaccuracy of a covenant, representation or warranty made by the Seller in this Agreement, such that the conditions in Section 8.1 or Section 8.2 are not capable of being satisfied and which breach is incapable of being cured or, if capable of being cured, has not been cured by the Seller prior to the earlier of (i) twenty (20) Business Days after receipt of written notice from Purchaser requesting such breach be cured or (ii) two (2) Business Days prior to the Outside Date; *provided, however*, that the right to terminate this Agreement pursuant to this Section 9.1(e) shall not be available to Purchaser if the failure of Purchaser to fulfill any of its obligations under this Agreement has been the primary cause of, or resulted in, such breach, or if the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied because there is then a material breach or inaccuracy of a covenant, representation or warranty made by Purchaser in this Agreement;
- (f) by the Seller, by written notice from the Seller to Purchaser, if there has been a breach or inaccuracy of a covenant, representation or warranty made by Purchaser in this Agreement, such that the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied and which breach is incapable of being cured or, if capable of being cured, has not been cured by Purchaser prior to the earlier of (i) 20 Business Days after receipt of written notice from the Seller requesting such breach be cured or (ii) two (2) Business Days prior to the Outside Date; *provided, however*, that the right to terminate this Agreement pursuant to this Section 9.1(f) shall not be available to the Seller if the failure of the Seller to fulfill any of its obligations under this Agreement has been the primary cause of, or resulted in, such breach, or if the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied because there is then a

material breach or inaccuracy of a covenant, representation or warranty made by the Seller in this Agreement;

(g) by Purchaser or the Seller, by written notice from Purchaser or the Seller to the other, if any Governmental Authority of competent jurisdiction shall have issued an Order, enacted any Applicable Law or taken any other action restraining, enjoining or otherwise prohibiting the consummation of the Transactions and, in the case of Orders and other actions, such Order or other action shall have become Final Orders; *provided, however*, that the right to terminate this Agreement pursuant to this Section 9.1(g) shall not be available to the party seeking to terminate if any action of such party or any failure of such party to act has caused such Order or other action and such action or failure constitutes a breach of this Agreement;

(h) by written notice from Purchaser to Sellers, if any Seller announces or files a plan or other transaction, or seeks to file a plan or other transaction, contemplating reorganization or sale of all or any part of any member of the Seller Group under the Bankruptcy Code that does not comply with the terms and conditions of this Agreement; or

(i) by Purchaser or the Seller, by written notice from Purchaser or the Seller to the other, if the Closing has not occurred on or prior to August 31, 2024 (the “**Outside Date**”); *provided, however*, that the party exercising the right to terminate this Agreement pursuant to this Section 9.1(i) shall not have been responsible for such failure of the Closing to occur through a breach or inaccuracy of a covenant, representation or warranty contained in this Agreement (it being understood, acknowledged, and agreed that if Seller is unable to provide any required Closing deliverable of Seller, then Seller shall be deemed to have been responsible for such failure of the Closing for purposes of this Section 9.1(i)).

9.2 Effect of Termination.

(a) In the event that this Agreement shall be terminated pursuant to Section 9.1, (i) Purchaser and its representatives shall promptly return all documents, work papers and other materials of the Seller including any confidential information and (ii) all further obligations of the parties hereto under this Agreement shall terminate without further Liability or obligation to the other parties hereto; *provided, however*, that, notwithstanding the foregoing, the Liabilities and obligations under (A) the Confidentiality Agreement, and (B) Section 2.9(c), Section 6.2(b), this Section 9.2 and ARTICLE 10 shall continue in full force and effect.

(b) Notwithstanding anything to the contrary in this Agreement, in the event of valid termination of this Agreement pursuant to Section 9.1, (i) except in the case of Fraud, the Seller’s Liability hereunder for any and all breaches of this Agreement prior to such termination of this Agreement shall be capped at an amount equal to the Deposit Escrow Amount and (ii) no such termination shall relieve Purchaser from any Liability hereunder for any and all breaches of this Agreement prior to such termination of this Agreement (including if this Agreement is terminated by the Seller pursuant to Section 9.1(f)) and the Seller shall be entitled to all remedies available at law or in equity, including payment of the Deposit Escrow Amount pursuant to Section 2.9(c) *provided* that Purchaser’s aggregate Liability for any such damages shall be limited to foreseeable, consequential damages, which such Liability in no case may exceed the Base Price.

9.3 Termination Fee.

(a) Subject to limitations set forth in the Bid Procedures Order, in consideration of Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, and to compensate Purchaser as a stalking-horse bidder, the Seller shall pay in cash to Purchaser, by wire transfer of immediately available funds to the account specified by Purchaser to the Seller in writing, an amount equal to the Termination Fee in the event that this Agreement is terminated pursuant to Section 9.1(b), in which case the Termination Fee shall be due and payable simultaneously with any

termination of this Agreement or immediately upon the Seller's entry into an agreement for an Alternate Transaction with another bidder, whichever is first; *provided, that*, Purchaser shall not be entitled to the fee described in this Section 9.3(a) to the extent Purchaser is in material breach of this Agreement at the time this Agreement is terminated pursuant to Section 9.1(b) if Seller has provided written notice of such material breach to Purchaser and such material breach has remained uncured for more than twenty (20) Business Days after Purchaser's receipt of such written notice. The Termination Fee shall be payable, in the first instance, from the proceeds of such Competing Bid or Alternate Transaction. The Seller's obligation to pay the Termination Fee pursuant to this Section 9.3(a) shall survive termination of this Agreement and shall constitute an administrative expense of the Seller under section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code.

(b) The Seller agrees and acknowledges that Purchaser's due diligence, efforts, negotiation, and execution of this Agreement have involved substantial investment of management time and have required significant commitment of financial, legal, and other resources by Purchaser, and that such due diligence, efforts, negotiation, and execution have provided value to the Seller and, in the Seller's reasonable business judgment, is necessary for the preservation of the value of the Seller's estate. The Seller further agrees and acknowledges that the Termination Fee is not a penalty, but rather represent liquidated damages that are reasonable in relation to Purchaser's efforts, Purchaser's lost opportunities from pursuing the Transactions, and the magnitude of the Transactions. The provision of the Termination Fee is an integral part of this Agreement, without which the Purchaser would not have entered into this Agreement.

ARTICLE 10. GENERAL PROVISIONS

10.1 Survival of Representations, Warranties and Covenants. All covenants and agreements contained in this Agreement that by their term are to be performed in whole or in part, or which prohibit actions, subsequent to Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to Closing, survive the Closing in accordance with their terms until fully performed or satisfied. All other covenants and agreements contained herein (to the extent such covenants and agreements contemplate or require performance by such party prior to the Closing), and all representations and warranties contained herein or in any Related Document shall not survive Closing and shall therefor terminate, including any Action for damages in respect of any breach or inaccuracy thereof, except in the event of Fraud. Notwithstanding the foregoing, the provisions of Section 2.9(c), Section 6.2, Section 9.2, this Article 10 and the Confidentiality Agreement shall survive the Closing. Notwithstanding anything to the contrary in this Agreement, the parties shall retain all rights and remedies of Fraud, and nothing herein shall preclude any party from commencing an Action or asserting claims related to Fraud.

10.2 Entire Agreement. This Agreement, including the Exhibits and Schedules hereto, the Confidentiality Agreement and the Related Documents, contain the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This Agreement supersedes all prior and contemporaneous agreements, arrangements, contracts, discussions, negotiations, undertakings and understandings (including any letters of intent or term sheets), whether written or oral, among the parties with respect to such subject matter (other than, for the avoidance of doubt, the Confidentiality Agreement and the Related Documents) or any prior course of dealings. The parties hereto have voluntarily agreed to define their rights, Liabilities and obligations respecting the Transactions exclusively in contract pursuant to the express terms and conditions of this Agreement, the Confidentiality Agreement and the Related Documents, and the parties hereto expressly disclaim that they are owed any duties or entitled to any remedies not expressly set forth in this Agreement, the Confidentiality Agreement and the Related Documents. Furthermore, the parties each hereby acknowledge that this Agreement, the Confidentiality Agreement and the Related Documents embody the justifiable expectations of sophisticated parties derived from arm's-length negotiations, and all parties to this Agreement, the Confidentiality Agreement and the Related Documents specifically acknowledge that no party has any special relationship with another party

that would justify any expectation beyond that of an ordinary purchaser and an ordinary seller in an arm's-length transaction. The sole and exclusive remedies for any Related Claims shall be those remedies available at law or in equity for breach of contract only (as such contractual remedies have been further limited or excluded pursuant to the express terms of this Agreement); and the parties hereby agree that neither party hereto shall have any remedies or cause of action (whether in contract or in tort or otherwise) of any statements, communications, disclosures, failures to disclose, representations or warranties not set forth in this Agreement.

10.3 Amendment; No Waiver. This Agreement, the Schedules and the Related Documents may be amended, supplemented or changed, and any provision hereof or thereof can be waived, only by a written instrument making specific reference to this Agreement (and, if applicable, the Related Documents) executed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any party of a breach of any provision of this Agreement or the Related Documents shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

10.4 Severability; Specific Versus General Provisions. Whenever possible, each provision of this Agreement and the Related Documents shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any term or other provision of this Agreement or the Related Documents is invalid, illegal, or incapable of being enforced by any Applicable Law or public policy, all other terms or provisions of this Agreement and the Related Documents shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, in whole or in part, such term or provision is hereby deemed modified to give effect to the original written intent of the parties to the greatest extent consistent with being valid and enforceable under Applicable Law. No party hereto shall assert, and each party shall cause its respective Affiliates or related parties not to assert, that this Agreement or any part hereof is invalid, illegal or unenforceable. Notwithstanding anything to the contrary, to the extent that a representation, warranty, covenant or agreement of the Seller contained in this Agreement or the Schedules (each, a "**Provision**") addresses a particular issue with specificity (a "**Specific Provision**"), and no breach by the Seller exists under such Specific Provision, the Seller shall not be deemed to be in breach of any other Provision (with respect to such issue) that addresses such issue with less specificity than the Specific Provision, and if such Specific Provision is qualified or limited by the Seller's Knowledge, or in any other manner, no other Provision shall supersede or limit such qualification in any manner.

10.5 Expenses and Obligations. Except as otherwise provided in this Agreement, all costs and expenses incurred by the parties hereto in connection with the Transactions, including the costs, expenses and disbursements of counsel and accountants, shall be borne solely and entirely by the party that has incurred such expenses.

10.6 Notices. All notices, consents, waivers, and other communications under this Agreement or the Related Documents must be in writing and will be deemed to have been duly given (a) if personally delivered, on the date of delivery, (b) if delivered by express courier service of national standing for next day delivery (with charges prepaid), on the Business Day following the date of delivery to such courier service, (c) if delivered by electronic mail (unless the sender receives an automated message that the email has not been delivered) on the date of transmission if on a Business Day before 5:00 p.m. local time of the business address of the recipient party (otherwise on the next succeeding Business Day); *provided* that such notice is further transmitted by national overnight courier or registered or certified mail within two (2) Business Days after providing such notice via electronic mail, and (d) if deposited in the United States mail, first-class postage prepaid, on the date of delivery, in each case to the appropriate addresses or email

addresses set forth below (or to such other addresses as a party may designate by notice to the other parties in accordance with this Section 10.6):

If to Purchaser:

Amylyx Pharmaceuticals, Inc.
43 Thorndike St,
Cambridge, MA 02141
Attn: Gina Mazzariello
Email: [REDACTED]

with a copy to (which will not constitute notice):

Ropes & Gray LLP
800 Boylston St,
Boston, MA 02199
Attn: Hannah England; Cristine Schwarzman
Email: Hannah.England@ropesgray.com; Cristine.Schwarzman@ropesgray.com

If to the Seller:

Eiger BioPharmaceuticals, Inc.
2100 Ross Avenue
Dallas, Texas 75201
Attn: David Apelian, Chief Executive Officer
Email: dapelian@eigerbio.com

with a copy to (which will not constitute notice):

Sidley Austin LLP
2021 McKinney Ave., Suite 2000
Dallas, TX 75201
Attention: Thomas R. Califano, William E. Curtin and Anne G. Wallace
Email: tom.califano@sidley.com, wcurtin@sidley.com, and anne.wallace@sidley.com

10.7 **Counterparts.** This Agreement may be executed in two or more counterparts (any of which may be delivered by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in .PDF format, or other agreed format shall be sufficient to bind the parties to the terms and conditions of this Agreement. Minor variations in the form of the signature page, including footers from earlier versions of this Agreement or any Related Document, shall be disregarded in determining the party's intent or the effectiveness of such signature.

10.8 **Governing Law.** Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, the Related Documents and all Related Claims shall be governed by the internal laws of the State of Delaware (including its statute of limitations), without giving effect to any choice or conflict of law principles or rules that would cause the application of the Applicable Laws of any other jurisdiction.

10.9 **Submission to Jurisdiction; Consent to Service of Process.**

(a) Without limiting any party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to interpret and/or enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any Related Document, any breach or default hereunder or thereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy

Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 10.6; *provided, however*, that if the Bankruptcy Cases have closed, the parties agree to irrevocably submit to the exclusive jurisdiction of the United States District Court for the Northern District of Texas over all Related Claims, and each party hereto hereby irrevocably agrees that all Related Claims may be heard and determined in such courts. The parties hereto hereby irrevocably and unconditionally waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Related Claim brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any Related Claim by the delivery of a copy thereof in accordance with the provisions of Section 10.6 (other than by email) along with a notification that service of process is being served in conformance with this Section 10.9(b). Nothing in this Agreement will affect the right of any party to serve process in any other manner permitted by Applicable Law.

10.10 Waiver of Jury Trial. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY RELATED CLAIMS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING OR RELATED CLAIM BROUGHT BY OR AGAINST IT, DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY RELATED CLAIMS.

10.11 Rights Cumulative. All rights and remedies of each of the parties under this Agreement and the Related Documents will be cumulative, and the exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy available under this Agreement, the Related Documents or Applicable Law.

10.12 Assignment. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors by operation of law and permitted assigns of the parties hereto. No assignment of this Agreement or any of the rights, interests or obligations under this Agreement may be made by any party hereto at any time, whether or not by operation of law, without the prior written consent of the other party hereto, and any attempted assignment without the required consent shall be void; provided, however, that (a) Purchaser may assign (i) any of its rights or delegate any of its duties under this Agreement to any of its Affiliates, and (ii) its rights, but not its duties, under this Agreement to any of its financing sources and (b), the Seller may assign any of its rights or delegate any of its duties under this Agreement (i) to any of its Affiliates, (ii) to any creditor or group of creditors pursuant to an order of the Bankruptcy Court entered in the Bankruptcy Cases, including Seller's rights to payment hereunder and rights and ability to enforce the terms of this Agreement, and (iii) for collateral security purposes to any lender of the Seller or its Affiliates; provided, further, however, that, in each case, such assignment shall not release Purchaser from its obligations under this Agreement and the Seller shall have no obligation to pursue remedies against any assignee of Purchaser before proceeding against Purchaser for any breach of Purchaser's obligations hereunder.

10.13 Specific Enforcement; Remedies. The parties hereto agree that irreparable damage (for which monetary relief, even if available, would not be an adequate remedy) would occur in the event that any of the provisions of this Agreement were not performed by the parties hereto in accordance with their specific terms or were otherwise breached. It is accordingly agreed that (a) Purchaser, on the one hand, and the Seller, on the other hand, shall be entitled to enforce compliance with the covenants and obligations of the other party under this Agreement in any court of competent jurisdiction and appropriate relief, without

proof of damages or otherwise, shall be granted, and that this shall include the right of the Seller to cause Purchaser to fully perform the terms of this Agreement to the fullest extent permissible pursuant to this Agreement and Applicable Laws and to thereafter cause this Agreement and the Transactions to be consummated on the terms and subject to the conditions thereto set forth in this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the Transactions and without that right, neither the Seller nor Purchaser would have entered into this Agreement. Remedies shall be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement. Each of the parties hereto hereby (i) waives any defenses in any action for specific performance, including the defense that a remedy at law would be adequate, (ii) waives any requirement under any Applicable Law to post a bond or other security as a prerequisite to obtaining equitable relief and (iii) agrees not to assert that a remedy of specific performance or other equitable relief is unenforceable, invalid, contrary to law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law.

10.14 Third-Party Beneficiaries. Except as set forth in Section 10.15 (with respect to the Nonparty Affiliates), Section 10.16 (with respect to the released parties identified therein), Section 10.18 (with respect to the Sellers' Group Members) and the next sentence, nothing in this Agreement, express or implied, is intended to confer upon any Person other than the parties hereto any rights or remedies of any nature whatsoever under or by reason of this Agreement. From and after the Closing, all of the Persons identified as third-party beneficiaries in the first sentence of this Section 10.14 shall be entitled to enforce such provisions and to avail themselves of the benefits of any remedy for any breach of such provisions, all to the same extent as if such Persons were parties to this Agreement. The representations and warranties in this Agreement are the product of negotiations between the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with this Agreement without notice or Liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any party hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the Effective Date or as of any other date.

10.15 No Personal Liability of Directors, Officers and Owners. All Related Claims may be made only against (and are those solely of) the entities that are expressly identified as parties in the preamble to this Agreement (the "**Contracting Parties**"). No Person who is not a Contracting Party, including any current, former or future director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, representative or assignee of, or any financial advisor or lender to, any Contracting Party, or any current, former or future director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, representative, or any financial advisor or lender to, any of the foregoing (collectively, "**Nonparty Affiliates**"), shall have any Liability pursuant to any Related Claim; and, to the maximum extent permitted by Applicable Law, each Contracting Party hereby waives and releases all such Liabilities, claims, causes of action, and obligations against any such Nonparty Affiliates.

10.16 General Release.

(a) Effective as of the Closing, the Seller, on behalf of itself, its Affiliates and each of their respective predecessors, successors, and assigns (each of the foregoing, a "**Seller Releasing Party**"), hereby fully, irrevocably and unconditionally releases and forever discharges Purchaser and its respective past, present, and future directors, managers, officers, employees, agents, stockholders, members, representatives, Affiliates, financial advisors, legal advisors, investment bankers, and other professionals from and against, and covenants that it will not (directly or indirectly) assert any claim or pursue any proceeding of any kind before any Governmental Authority based upon, any and all claims, Actions, causes

of action, suits, rights, agreements, Liabilities and demands whatsoever and all consequences thereof, known or unknown, actual or potential, suspected or unsuspected, fixed or contingent, both in law and in equity, whether existing as of the Closing or arising thereafter, that a Seller Releasing Party has or may have, now or in the future, arising out of, relating to, or resulting from any act or omission, error, negligence, breach of contract, tort, violation of law, matter or cause whatsoever from the beginning of time to the Closing Date. The foregoing sentence shall not be deemed to be a release or waiver by a Seller Releasing Party of any Action it may have under this Agreement or any of the other Related Documents. Nothing in this Section 10.16(a) shall limit Seller's rights in the case of actual fraud.

(b) Effective as of the Closing, Purchaser, on behalf of itself, its Affiliates and each of their respective predecessors, successors, and assigns (each of the foregoing, a "**Purchaser Releasing Party**"), hereby fully, irrevocably and unconditionally releases and forever discharges the Seller, the Seller's Affiliates and its and their respective past and present directors, managers, officers, agents, stockholders, members, representatives, Affiliates, financial advisors, legal advisors, investment bankers, and other professionals from and against, and covenants that it will not (directly or indirectly) assert any claim or pursue any proceeding of any kind before any Governmental Authority based upon, any and all claims, Actions, causes of action, suits, rights, agreements, Liabilities and demands whatsoever and all consequences thereof, known or unknown, actual or potential, suspected or unsuspected, fixed or contingent, both in law and in equity, whether existing as of the Closing or arising thereafter, that a Purchaser Releasing Party has or may have, now or in the future, arising out of, relating to, or resulting from any act or omission, error, negligence, breach of contract, tort, violation of law, matter or cause whatsoever from the beginning of time to the Closing Date. The foregoing sentence shall not be deemed to be a release or waiver by a Purchaser Releasing Party of any Action it may have under this Agreement or any of the other Related Documents. Nothing in this Section 10.16(b) shall limit Purchaser's rights in the case of actual fraud.

(c) Without limiting in any way the scope of the releases contained in this Section 10.16 and effective upon the Closing, each of the Seller and Purchaser, to the fullest extent allowed under Applicable Law, hereby waives and relinquishes all statutory and common law protections purporting to limit the scope or effect of a general release, whether due to lack of knowledge of any claim or otherwise, including by waiving and relinquishing the terms of any Applicable Law that provides that a release may not apply to material unknown claims. Each of the Seller and Purchaser hereby affirms its intent to waive and relinquish such unknown claims and to waive and relinquish any statutory or common law protection available in any applicable jurisdiction with respect thereto. Each of the Seller and Purchaser hereby represents and warrants that it has access to adequate information regarding the terms hereof, the scope and effect of the releases in this Section 10.16, and all other matters encompassed by this Agreement to make an informed and knowledgeable decision with regard to entering into this Agreement.

10.17 Bulk Sales Laws. The parties intend that pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Transferred Assets shall be free and clear of any Liens on the Transferred Assets including any liens or claims arising out of the bulk transfer laws, and the parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each party hereby waives compliance by the parties with the "bulk sales," "bulk transfers" or similar Applicable Laws and all other similar Applicable Laws in all applicable jurisdictions in respect of the Transactions.

10.18 Legal Representation. Purchaser and the Seller acknowledge and agree that the Law Firm has represented the Seller Group in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Related Documents and the consummation of the Transactions, and that the Seller, its Affiliates and its partners, officers, directors and representatives (the "**Seller Group Members**") have a reasonable expectation that the Law Firm may represent them in connection with any Action involving any Seller Group Member, on the one hand, and Purchaser or any of its Affiliates and representatives (the "**Purchaser Group Members**"), on the other hand, arising under this Agreement, the

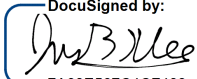
Related Documents or the Transactions. Purchaser hereby, on behalf of itself and the other Purchaser Group Members, irrevocably: (a) acknowledges and agrees that any attorney-client privilege, solicitor-client privilege, work product or other attorney-client or solicitor-client confidential information, in each case, solely to the extent such information does not constitute a, or is not included in any, Transferred Asset (“**Attorney-Client Information**”) arising from communications prior to the Closing between any Seller (including any one or more officers, directors or stockholders of such Seller), on the one hand, and the Law Firm, on the other hand, is not included in the property, rights, privileges, powers, franchises and other interests that are possessed by or vested in the Business or the Transferred Assets, that any such Attorney-Client Information shall be deemed property of, and controlled solely by, such Seller for the benefit and on behalf of the Seller Group Members and, upon request, convey and transfer any Attorney-Client Information to the Seller; (b) acknowledge and agree that the Seller Group Members shall have the right to retain, or cause the Law Firm to retain, any such Attorney-Client Information in the possession of the Law Firm or such Seller Group Members at the Closing; (c) disclaim the right to assert a waiver by any Seller Group Member with regard to the attorney-client privilege, solicitor-client privilege or other right to confidentiality with respect to such Attorney-Client Information solely due to the fact that such documentation or information is physically in the possession of Purchaser after the Closing; (e) consent to the Law Firm’s representation after the Closing of any Seller Group Member in any Action that may relate to a Purchaser Group Member or the Transactions and consent to and waive any conflict of interest arising therefrom without the need for any future waiver or consent; and (f) consent to the disclosure by the Law Firm to any Seller Group Member of any documentation or information obtained by the Law Firm during the course of its representation of Seller or any Affiliate prior to the Closing, whether related to this Agreement, the Related Documents, the Transactions or otherwise, whether or not such disclosure is made prior to or after the Closing and whether or not the documentation or information disclosed is subject to any attorney-client privilege, solicitor-client privilege or confidentiality obligation to any Seller, any Affiliate of such Seller or any other Person. In the event that any Action arises after the Closing between any Purchaser Group Member and a Person other than a Seller Group Member, such Purchaser Group Member shall not disclose any documentation or information that is subject to an attorney-client privilege or other rights of confidentiality referenced in this Section 10.18 without the prior written consent of the applicable Seller; provided, however, that if such Purchaser Group Member is required by judicial order or other legal process to make such disclosure, such Purchaser Group Member shall promptly notify the applicable Seller in writing of such requirement (without making disclosure) and shall provide such Seller with such cooperation and assistance as shall be necessary to enable such Seller to prevent disclosure by reason of such attorney-client privilege, solicitor-client privilege or other rights of confidentiality. This Section 10.18 is for the benefit of the Seller Group Members and such Persons are intended third-party beneficiaries of this Section 10.18.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

PURCHASER:

AMLYX PHARMACEUTICALS, INC.

DocuSigned by:

7A68E567C4CF483...
By: _____
Name: Justin Klee
Title: co-CEO

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

SELLER:

EIGER BIOPHARMACEUTICALS, INC.


DocuSigned by:

By: _____
Name: James Vollins
Title: General Counsel, Chief Compliance Officer
& Corporate Secretary

Exhibit 9

Warznak Declaration

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

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

*Attorneys for the Debtors
and Debtors in Possession*

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

Related Docket Nos. 13, 94, 331, 350

**DECLARATION OF CRAIG D. WARZNAK
IN SUPPORT OF THE DEBTORS’ MOTION FOR
THE SALE OF THE AVEXITIDE ASSETS AND MOTION FOR ENTRY
OF THE FINAL ORDER (I) AUTHORIZING THE DEBTORS TO USE CASH
COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION
TERM LOAN SECURED PARTIES; AND (III) MODIFYING THE AUTOMATIC STAY**

Pursuant to 28 U.S.C. § 1746, I, Craig D. Warznak, hereby declare under penalty of perjury that the following is true and correct to the best of my information, knowledge, and belief:

1. I am a Senior Vice President at SSG Advisors, LLC (“SSG”), an investment banking firm that maintains offices at Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West

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 2100 Ross Avenue, Dallas TX 75201.

Conshohocken, PA 19428, and I am duly authorized to make this declaration on behalf of SSG. I have over ten (10) years of experience in the restructuring industry and extensive experience: (i) marketing companies or their assets for sale, including experience marketing companies in distress and debtors in bankruptcy cases; (ii) raising capital for special situation transactions; and (iii) restructuring companies' balance sheets both in court and out of court. SSG was engaged by the Debtors in March 2024 to aid in the effectuation of a marketing and sale process.

2. On April 1, 2024, J. Scott Victor, a managing director at SSG, submitted a declaration [Docket No. 24] (the "Victor Declaration")² in support of the *Debtors' Motion for Entry of an Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentyln Therapeutics, Inc. as the 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 (B) Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief* (the "Bid Procedures Motion") [Docket No. 13]. On April 5, 2024, the Court entered an order approving the Bid Procedures Motion (the "Bid Procedures Order") [Docket No. 94].

3. On June 12, 2024, the Debtors filed the *Revised Notice of Sale, Bid Procedures, Auction, and Sale Hearing* [Docket No. 331], which included revised dates and deadlines for the Bid Deadline, Auction, and Sale Hearing for the Avexitide Sale Transaction (the "Revised Bid Procedures").

² Capitalized terms used but not defined herein shall have the meanings given to them in the Victor Declaration, Bid Procedures Order, Revised Bid Procedures, Proposed Avexitide Sale Order, and Avexitide APA.

4. I submit this declaration (the “Warznak Declaration”) in support of the entry of the Debtors’ proposed order approving the Avexitide Sale Transaction (the “Proposed Avexitide Sale Order”).

5. I am authorized to execute this Declaration on the Debtors’ behalf in support of the relief requested in the Proposed Avexitide Sale Order. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge or opinion, information learned from my review of relevant documents, and information I received from the Debtors representatives and professionals. If I were called to testify, I could and would testify to the facts set forth herein.

Avexitide Sale Transaction

6. Based on SSG’s diligence and conversations with the Debtors and their advisors, I believe that the prepetition and postpetition engagement with other interested parties appropriately identified potential bidders for the Avexitide Assets and that entry into the stalking horse purchase agreement (the “Stalking Horse APA”) for \$10,000,000 with Spruce Bioscience, Inc. (the “Stalking Horse Purchaser”) for the Avexitide Assets as set forth in the *Notice of Selection of Stalking Horse Bidder* [Docket No. 333] was the best means to achieve the best available value of the Debtors’ estates for all stakeholders.

7. Throughout the process, SSG continued to interface with potential bidders for the Avexitide Assets to solicit higher or otherwise better proposals from third parties and to facilitate an auction for the Avexitide Assets, as necessary. During the postpetition period, SSG continued to progress discussions with parties and successfully solicited interest from additional potential parties that did not exhibit interest during the prepetition outreach process. This process enabled

the Debtors to secure, in addition to the Stalking Horse APA, a Qualified Bid from a third party and conduct the Avexitide Auction.

8. In accordance with the Revised Bid Procedures, on June 17, 2024, the Debtors conducted an auction via Zoom for the sale of the Avexitide Assets with 122 rounds of bidding over three (3) hours. Following the conclusion of the Avexitide Auction, as set forth in the *Notice of Selection of Winning Bid* [Docket No. 350], the Debtors selected Amylyx Pharmaceuticals, Inc. (the “Purchaser”) as the Winning Bidder with a Purchase Price of \$35,100,000 *plus* the aggregate amount of Determined Cure Costs and Assumed Liabilities (the “Winning Bid”) with Spruce Bioscience, Inc. as the Back-Up Bidder at \$35,000,000 *plus* the aggregate amount of Determined Cure Costs and Assumed Liabilities. I believe that the Purchaser is willing and able to consummate the transaction contemplated by the Purchaser’s asset purchase agreement (the “Avexitide APA”) on the terms set forth therein and the Debtors intend to consummate this value-maximizing transaction therein (the “Avexitide Sale Transaction”).

9. I believe that the Debtors, with the assistance of their advisors, conducted the marketing, sale process, and auction for the Avexitide Assets in a manner that was thorough, fair, designed to achieve the best available value for the Debtors’ estates for all stakeholders and in compliance with the Bid Procedures Order and the Revised Bid Procedures in all material respects.

10. All parties that expressed a potential interest in the Avexitide Assets were afforded a full and equal opportunity to conduct diligence and submit offers for the Avexitide Assets and to object or otherwise be heard with respect to the sale process. I believe that at all times, the Debtors’ negotiations and discussions with the potential bidders, including the Debtors’ negotiations and discussions with the Purchaser, for the Avexitide Assets were conducted in good

faith, without collusion, and at arm's length and by parties who were represented by their own counsel and advisors.

11. I believe that the Purchaser, SSG, the Debtors, and the Debtors' other professionals acted in good faith throughout the sale process. I am not aware of any communications or collusion between the Purchaser and any other potential bidders for the Avexitide Assets.

12. Additionally, I believe that the sale of the Avexitide Assets to the Purchaser pursuant to the terms of the Avexitide APA, is in the best interest of the Debtors, their estates, and their creditors because the Winning Bid is the highest or otherwise best offer available for the Avexitide Assets and will result in the best available recoveries for the Debtors' creditors. I believe that the Back-Up Bid, submitted by Spruce Biosciences, Inc., is the second highest and best offer available.

13. The Avexitide APA was not entered into for the purpose of hindering, delaying, or defrauding creditors. Neither the Debtors nor the Purchaser entered into the Avexitide APA or are consummating the Avexitide Sale Transaction with any fraudulent or otherwise improper purpose.

14. The Purchaser and the Debtors are not affiliates of each other, and no common identity of incorporators, directors, or controlling shareholders exists between the Purchaser and Debtors.

15. In light of the Debtors' comprehensive sale and marketing process pre- and postpetition, I do not believe that further marketing of the Avexitide Assets or an extension of the Avexitide Bid Deadline would have resulted in higher or otherwise better offers for the Avexitide Assets, and I believe that the Avexitide Assets were properly exposed to the market. Based on the foregoing, I believe that the Debtors have a sound business justification for entering into the Avexitide APA and consummating the sale of the Avexitide Assets to the Purchaser.

16. Furthermore, to ensure the seamless transfer of the Avexitide Assets, and thereby maximize their value, I believe that time is of the essence in consummating the Avexitide Sale Transaction. As such, I believe the stay established by Bankruptcy Rules 6004 and 6006 should be lifted to allow for a speedy transfer.

[Remainder of page intentionally left blank.]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true correct to the best of my knowledge, information and belief.

Date: June 25, 2024

/s/ Craig D. Warznak
Craig D. Warznak
Senior Vice President