

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

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
Debtors. ) (Jointly Administered)  
 )  
 ) **Re: D.I. 16, 166**  
 )

**NOTICE OF DEBTORS’ DESIGNATION OF STALKING HORSE AS WINNING  
BIDDER AND THE STALKING HORSE APA AS THE WINNING BID  
FOR CERTAIN OF THE DEBTORS’ ASSETS**

**PLEASE TAKE NOTICE** that, on July 17, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”), commencing these chapter 11 cases (the “Chapter 11 Cases”).

**PLEASE TAKE FURTHER NOTICE** that, on July 17, 2023, the Debtors filed the *Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially all of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances After the Auction and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) in the Alternative, Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances to Ligand Pharmaceuticals if Not Approved as the Stalking Horse Bidder* [D.I. 16] (the “Bidding Procedures Motion”). On August 15, 2023, the Court entered the order approving the Bidding Procedures Motion (the “Bidding Procedures Order”) [D.I. 166]. The Bidding Procedures Order contemplated one or more sales (each a “Sale”) of the Debtors’ development and commercialization rights to their research and development portfolio (the “R&D Assets”) and to the rights to commercialize the Debtors’ commercial portfolio (the “Commercial Assets”) and together with the R&D Assets, the “Assets,” as more fully defined in the Bidding Procedures) free and clear of all liens, claims, interests, and encumbrances and

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.



designated one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee (“Ligand”) as the Stalking Horse Bidder<sup>2</sup> for all of the Assets.

**PLEASE TAKE FURTHER NOTICE** *that in accordance with the Bidding Procedures Order, the Debtors have selected and designated the Stalking Horse Bidder as the Winning Bidder for the R&D Assets and certain of the Commercial Assets related to Sitavig as evidenced by that certain Asset Purchase Agreement dated August 31, 2023, by and between the Debtors and the Stalking Horse (the “Stalking Horse APA”), attached hereto as Exhibit A.*

**PLEASE TAKE FURTHER NOTICE** *that the Debtors are also designating the Qualified Bid of Mayne Pharma LLC (“Mayne”) for certain of the Commercial Assets related to Rhofade as the Winning Bidder for such Assets by a separate notice.*

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek entry of a sale order (the “Ligand Sale Order”) at the hearing scheduled for September 11, 2023, at 10:00 a.m. (ET). A copy of the Ligand Sale Order is attached hereto as Exhibit B.

Dated: September 1, 2023  
Wilmington, Delaware

Respectfully submitted,

*/s/ Daniel B. Butz*

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the means ascribed to them in the Bidding Procedures Order.

**Exhibit A**

**(Stalking Horse APA)**

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**AMENDED AND RESTATED ASSET PURCHASE AGREEMENT**

**by and among**

**NOVAN, INC.,**

**EPI HEALTH, LLC**

**and**

**LIGAND PHARMACEUTICALS INCORPORATED**

**September 1, 2023**

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

## AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

This AMENDED AND RESTATED ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into as of September 1, 2023, by and among Novan, Inc., a Delaware corporation (“Novan”), EPI Health, LLC, a South Carolina limited liability company (“EPI Health” and, together with Novan, “Sellers” or the “Debtors”), and Ligand Pharmaceuticals Incorporated, a Delaware corporation (together with its permitted successors, designees and assigns, “Buyer”). Sellers and Buyer are referred to collectively herein as the “Parties.” Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in Article I.

WHEREAS, on July 17, 2023 (the “Execution Date”), Sellers filed voluntary petitions for relief (the “Chapter 11 Cases”) pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”);

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

WHEREAS, on the Execution Date, the Parties entered into that certain Asset Purchase Agreement (the “Initial Purchase Agreement”), pursuant to which Sellers agreed to sell, transfer and assign to Buyer, and Buyer agreed to acquire and assume from Sellers, pursuant to Sections 363 and 365 of the Bankruptcy Code, the Purchased Assets and the Assumed Liabilities (in each case as defined in the Initial Purchase Agreement) upon the terms and subject to the conditions set forth in the Initial Purchase Agreement;

WHEREAS, pursuant to the Initial Purchase Agreement, the Parties agreed to seek entry of a Sale Procedures Order by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) upon the terms and subject to the conditions set forth in the Initial Purchase Agreement and in the Sale Procedures Order;

WHEREAS, pursuant to the Initial Purchase Agreement, Sellers agreed to seek the entry of the Sale Order by the Bankruptcy Court approving the Initial Purchase Agreement and authorizing Sellers to consummate the Contemplated Transactions upon the terms and subject to the conditions set forth in the Initial Purchase Agreement and in the Sale Order;

WHEREAS, the Parties desire to enter into this Agreement in order to amend and restate the terms of the Initial Purchase Agreement;

WHEREAS, the board of directors, board of managers or other applicable governing body of each Seller has determined that it is advisable and in the best interests of such Seller’s creditors, equity holders and estate and the beneficiaries of such estate to consummate the Contemplated Transactions provided for herein pursuant to the Sale Procedures Order and the Sale Order and has approved this Agreement, subject to higher and better offers as contemplated by the Sale Procedures Order; and



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

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

## **ARTICLE I DEFINITIONS**

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

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

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

“Alternate Transaction” means a transaction or series of related transactions pursuant to which Sellers, pursuant to the Sale Procedures Order, (a) accept one or more Qualified Bids, other than that of Buyer, as the highest and best offer, or (b) sell, transfer, lease or otherwise dispose of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Sellers or otherwise), including pursuant to a Plan or refinancing, all or substantially all of the Purchased Assets (or agrees to do any of the foregoing) in a transaction or series of transactions to a Person or Persons other than Buyer, but does not mean the sale of assets to customers conducted in the Ordinary Course of Business; provided that with respect to any series of related transactions described herein, the first such transaction in such series constitutes an “Alternate Transaction” for purposes of Section 8.1.

“Applicable Deadline” means August 21, 2023.

“Assumed Commercial Business Assets” has the meaning set forth in Section 2.1(b).

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

“Assumed Contracts” means those Leases and Contracts that have been assumed by Sellers and assigned to Buyer pursuant to Section 2.6 and Section 365 of the Bankruptcy Code, which, for the avoidance of doubt shall not include any Non-Real Property Contract or Lease that is excluded and rejected pursuant to Section 2.6.

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

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

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

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

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

“Bid” means, collectively, the Commercial Business Assets Bid and the Development Assets Bid.

“Bid And Release” has the meaning set forth in Section 2.5(b)(i).

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

“Business Authorizations” has the meaning set forth in Section 3.20(a).

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

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

“Buyer Released Parties” has the meaning set forth in Section 5.8.

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

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

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

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

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

“Commercial Business Assets Bid” means a bid to purchase the Assumed Commercial Business Assets by the Buyer equal to \$150,000, which is subject to payment (a) by offset, on a dollar-for-dollar basis, against all outstanding Obligations (as defined in the DIP Facility) under the DIP Facility, and (b) with cash in the amount of the difference between \$150,000 and all outstanding Obligations (as defined in the DIP Facility) under the DIP Facility.

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

“Company SEC Documents” has the meaning set forth in Section 3.16(b).

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

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

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

“Conversion Trigger Event” has the meaning set forth in Section 5.2(i).

“Cure Amounts” has the meaning set forth in Section 2.6(b).

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

“Data” has the meaning set forth in Section 3.20(h).

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

“Development Assets” has the meaning set forth in Section 2.1(a).

“Development Assets Bid” means a bid to purchase the Development Assets by the Buyer equal to \$12,000,000, which is subject to payment (a) by offset, on a dollar-for-dollar basis, against all outstanding Obligations (as defined in the DIP Facility) under the DIP Facility, and (b) with

cash in the amount of the difference between \$12,000,000 and all outstanding Obligations (as defined in the DIP Facility) under the DIP Facility.

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

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

“DIP Indebtedness” means all “DIP Obligations” as defined in the DIP Order.

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

“DIP Loan Agreement” shall have the same meaning as the term “DIP Credit Agreement” as defined in the DIP Order.

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

“DIP Order” means as of any date of determination (i) the *Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender(III) Scheduling a Final Hearing, and (IV) Granting Related Relief* that was entered by the Bankruptcy Court on or about July 21, 2023 (the “Interim Order”) or (ii) the Final Order (as defined in the Interim Order), whichever such Order is then in effect.

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

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

“Employee Benefit Plan” means (a) any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), (b) employment, consulting, severance, termination protection, change in control, transaction bonus, retention or similar plan, program, policy, agreement or arrangement and (c) any other benefit or compensation plan, program, agreement or arrangement of any kind, providing for compensation, bonuses, profit-sharing, or other forms of incentive or deferred compensation, vacation benefits, insurance, medical, dental, vision, prescription or fringe benefits, life insurance, disability or sick leave benefits or post-employment or retirement benefits, in each case, maintained or contributed to by any Seller or in which any Seller participates or participated and that provides benefits to any Current Employee or Former Employee.

“Employee Roster” has the meaning set forth in Section 3.9(a).

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

“EPI Causes of Action” means, collectively, any claims, causes of action, demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, defenses, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, in each case to the extent owned by EPI Health, other than the Purchased Avoidance Actions.

“EPI Health” has the meaning set forth in the preamble.

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

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

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

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

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

“Excluded Commercial Business Assets” has the meaning set forth in Section 2.2(a).

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

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

“FDA” means the United States Food and Drug Administration.

“Final Order” means: (a) an order or judgment of the Bankruptcy Court, as entered on the docket in any Chapter 11 Cases (or any related adversary proceeding or contested matter) or the docket of any other court of competent jurisdiction; or (b) an order or judgment of any other court having jurisdiction over any appeal from (or petition seeking certiorari or other review of) any order or judgment entered by the Bankruptcy Court (or any other court of competent jurisdiction, including in an appeal taken) in the Chapter 11 Cases (or in any related adversary proceeding or contested matter), in each case that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired according to applicable law and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in

no modification of such order, or has otherwise been dismissed with prejudice; provided that the possibility a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the bankruptcy rules or the local bankruptcy rules of the Bankruptcy Court, may be filed relating to such order shall not prevent such order from being a Final Order.

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

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

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

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

“Hazardous Substance” means any toxic or hazardous material, substance or waste as to which Liability or standards of conduct may be imposed under any Environmental Laws.

“Health Care Laws” means, to the extent applicable to the Sellers or the Purchased Assets (i) any and all federal, state and local fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the Stark Law (42 U.S.C. § 1395nn), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the exclusion laws (42 U.S.C. § 1320a-7), the civil monetary penalty laws (42 U.S.C. § 1320a-7a), the regulations promulgated pursuant to such statutes and any comparable state laws; (ii) the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), and the regulations promulgated thereunder and any comparable state laws, (iii) Medicare (Title XVIII of the Social Security Act) and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173) and the regulations promulgated thereunder; (vi) quality, safety and accreditation standards and requirements of all applicable state laws or Governmental Authorities; and (vii) any and all other applicable health

care laws, rules, codes, statutes, ordinances, regulations, manual provisions, policies and administrative guidance, each of (i) through (vii) as may be amended from time to time.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as the same may be amended, modified or supplemented from time to time, any successor statute thereto, any and all rules or regulations promulgated from time to time thereunder, and any comparable state laws.

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

“Initial Purchase Agreement” has the meaning set forth in the recitals.

“Insurance Policy” means each primary, excess and umbrella insurance policy, bond and other forms of insurance owned or held by or on behalf of Sellers and their operations, properties and assets, including, without limitation, all stop-loss insurance policies with respect to Sellers’ self-insured medical and/or dental insurance programs.

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

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

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

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

“IRB” has the meaning set forth in Section 3.20(i).

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

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

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

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

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

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

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

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

“Lien” means any lien (as defined in Section 101(37) of the Bankruptcy Code), encumbrance, right, demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, encroachments, judgments, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use (whether known or unknown, secured or unsecured or in the nature of setoff or recoupment, choate or inchoate, filed or unfiled,



scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or nonmaterial, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Chapter 11 Cases, and whether imposed by agreement, understanding, Law, equity, or otherwise, including claims otherwise arising under doctrines of successor liability).

“Ligand Royalty Agreement” means that certain Development Funding and Royalties Agreement, dated as of May 4, 2019 (as amended from time to time), to which Buyer and Novan are each a party.

“Material Adverse Effect” means any change, event, effect, development, condition, circumstance or occurrence (when taken together with all other changes, events, effects, developments, conditions, circumstances or occurrences), that (a) is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to the condition (financial or otherwise), value or results of operations of the Purchased Assets (taken as a whole); provided, however, that no change, event, effect, development, condition, circumstance or occurrence related to any of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been a Material Adverse Effect: (i) the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code or the effect, directly or indirectly, of such filing, including (A) any objections in the Bankruptcy Court to (1) this Agreement or any of the transactions contemplated hereby or thereby, (2) the reorganization of the Sellers, (3) the Sale Procedures Order or (4) the assumption or rejection of any Assumed Contract and (B) any Order of the Bankruptcy Court or any actions or omissions of the Sellers or their Subsidiaries in compliance therewith; (ii) acts of war, armed hostilities, sabotage or terrorism, or any escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreements, except to the extent that such change has a materially disproportionate adverse effect on the business of the Sellers relative to the adverse effect that such changes have on other companies in the industry in which the business of the Sellers operates; (iii) changes in conditions in the U.S. or global economy or capital or financial markets generally, including changes in interest or exchange rates, except to the extent that such change has a materially disproportionate adverse effect on the business of the Sellers relative to the adverse effect that such changes have on other companies in the industry in which the business of the Sellers operates; (iv) resulting from any act of God or other force majeure event (including natural disasters) (but, and notwithstanding anything contained in this paragraph to the contrary, excluding, for the avoidance of doubt, any global or national epidemic, pandemic (whether or not declared as such by any Governmental Body) or viral outbreak (including the “Coronavirus” or “COVID-19” pandemic), except to the extent that such change has a materially disproportionate adverse effect on the business of the Sellers relative to the adverse effect that such changes have on other companies in the industry in which the business of the Sellers operates); or (v) changes in Law or in GAAP or interpretations thereof; or (b) would reasonably be expected to prevent, materially delay or materially impair to the ability of any Seller to consummate the transactions contemplated by this Agreement or the Related Agreements on the terms set forth herein and therein.

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

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

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

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

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

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

“Outside Date” means September 26, 2023 (subject to Section 5.2(i)).

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

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

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

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

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

of the business of the Sellers thereon as it is currently being conducted; (d) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not materially impair value or the use or occupancy of such real property or materially interfere with the operation of the business of the Sellers at such real property; (e) with respect to Leasehold Improvements, any reversion or similar rights to the landlord or other third party upon expiration or termination of the applicable Lease; (f) any Liens held by Buyer pursuant to the Royalty Agreements and (g) any Liens associated with or arising in connection with any Assumed Liabilities.

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

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

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

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

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

“Products” means, collectively, the Assumed Commercial Business Assets and the Development Assets.

“Product Registrations” has the meaning set forth in Section 3.20(a).

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

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

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

“Purchased Avoidance Actions” means all causes of action, lawsuits, claims, rights of recovery and other similar rights of any Seller, including avoidance claims or causes of action under Chapter 5 of the Bankruptcy Code relating to the business of the Sellers or the Purchased Assets; provided that Purchased Avoidance Actions shall not include: any causes of action, lawsuits, claims, rights of recovery and other similar rights of any against the Sellers’ Insiders; causes of action, lawsuits, claims, rights of recovery and other similar rights of any related to the Sellers’ acquisition of EPI Health in 2022; and causes of action, lawsuits, claims, rights of recovery and other similar rights of any EPI Causes of Action.

“Purchased Inventory” means Inventory that is part of the Purchased Assets as set forth in Section 2.1.

“Qualified Bid” means competing bids qualified for the Auction in accordance with the Sale Procedures Order. For the avoidance of doubt, any bid for the Development Assets that does not include an express assumption and assignment of the Ligand Royalty Agreement, without modification, shall not be deemed a Qualified Bid for the Development Assets.

“Recall” has the meaning set forth in Section 3.14(b).

“Records” means the books, records, information, ledgers, files, invoices, documents, work papers, correspondence, lists (including customer lists, supplier lists and mailing lists), plans (whether written, electronic or in any other medium), drawings, designs, specifications, creative materials, advertising and promotional materials, marketing plans, studies, reports, data and similar materials related to the business of the Sellers.

“Reedy Creek Royalty Agreement” means that certain Royalty and Milestone Payments Purchase Agreement, dated as of April 29, 2019, by and between Novan and Reedy Creek Investments LLC.

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

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

“Remaining SB206 Critical Vendor Cure Payment Amount” means the remaining portion available for payment of the Budgeted SB206 Critical Vendor Cure Payments in the aggregate at the Closing.

“Reports” has the meaning set forth in Section 3.20(d).

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

“Restricted Period” has the meaning set forth in Section 6.9.

“Royalty Agreements” means, collectively, the Ligand Royalty Agreement and the Reedy Creek Royalty Agreement.

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

“Sale Motion” means a motion filed by the Sellers, in form and substance reasonably satisfactory to the Sellers and the Buyer, with the Bankruptcy Court styled as the *Motion of Debtors*

*for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale Hearing and Approving the Forms and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances After the Auction and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) In the Alternative, Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances to Ligand Pharmaceuticals If Not Approved as the Stalking Horse Bidder, which Sale Motion requests, among other things, authority to sell all or substantially all of the Debtors' assets, entry of the Sale Procedures Order, authority for the Debtors to enter into this Agreement and Related Agreements, and entry of the Sale Order approving this Agreement and Related Agreements.*

“Sale Order” means an Order of the Bankruptcy Court: (a) approving (i) this Agreement and the other Related Agreements and the execution, delivery, and performance by Sellers of this Agreement, the other Related Agreements and the other instruments and agreements contemplated hereby and thereby, (ii) the sale of the Purchased Assets to Buyer free and clear of all Liens, other than Permitted Liens and any Liens included in the Assumed Liabilities, (iii) the assumption of the Assumed Liabilities by Buyer on the terms set forth herein and in the other Related Agreements and (iv) the assumption and assignment to Buyer of the Assumed Contracts on the terms set forth herein and in the other Related Agreements; (b) determining that Buyer is a good faith purchaser; and (c) providing that the Closing will occur in accordance with the terms and conditions hereof.

“Sale Order Deadline” means September 11, 2023, unless extended by the Seller.

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

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

“SB206” means berdazimer gel, 10.3%.

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

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

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

“Sellers' Insiders” means any director or officer of any Seller, or any Person holding 10% or more of the issued and outstanding shares of capital stock or other equity securities of any Seller.

“Sellers’ Knowledge” (or words of similar import) means the actual or constructive knowledge, after due inquiry, of Paula Brown Stafford, John Donofrio, John M. Gay, Carri Geer and Tomoko Maeda-Chubachi.

“Studies” has the meaning set forth in Section 3.20(h).

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

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

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

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

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

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

“Transferred Employees” has the meaning set forth in Section 6.4(b).

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

“Transition Services Agreement” has the meaning set forth in Section 5.9.

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

## ARTICLE II PURCHASE AND SALE

**Section 2.1 Purchase and Sale of Purchased Assets.** Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement (including, without limitation, Section 4.7 below), at the Closing, Buyer shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Buyer, all of the Sellers’ right, title and interest in, to and under the Purchased Assets, free and clear of all Liens (other than Permitted Liens and any Liens included in the Assumed Liabilities), for the consideration specified in Section 2.5. “Purchased Assets” shall mean all of the, direct or indirect, right, title and interest of Sellers in, to and under the tangible and intangible assets (including goodwill), properties, rights, going concern value, claims and Contracts used, useful, or held for use in, or related to, the business of the Sellers (but excluding Excluded Assets) wherever situated and of whatever kind and nature, real or personal, as of the Closing, including:

(a) all of the Sellers’ right, title and interest in and to SB206 and all related Intellectual Property, Equipment, supplies and materials, Business Authorizations and Product Registrations (including new drug applications), files, records (including clinical and pre-clinical data), know-how, manufacturing assets and leases related to the same (collectively, the “Development Assets”);

(b) all of the Sellers’ right, title and interest in and to the products listed on Schedule 2.1(b) and all related Intellectual Property, Equipment, supplies and materials, Business Authorizations and Product Registrations (including new drug applications), files, records (including clinical and pre-clinical data), know-how, manufacturing assets and leases related to the same (collectively, the “Assumed Commercial Business Assets”), but excluding, for the avoidance of doubt, the Excluded Commercial Business Assets;

(c) all Inventory of Sellers as of the Closing, including all rights of Sellers to receive such Inventory, supplies and materials which are on order as of the Closing, whether or not obsolete or carried on Sellers’ books of account, in each case, with any transferable warranty and service rights related thereto (except to the extent primarily related to any Excluded Assets);

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

(e) all Intellectual Property owned by Sellers (to the extent not included in Section 2.1(a) and 2.1(b), and except to the extent primarily related to any Excluded Assets);

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

(g) all Records, including Records related to Taxes paid or payable by any Seller related to the business of the Sellers (except to the extent primarily related to any Excluded Assets);

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

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

(j) all of the Assumed Permits and all rights, interests, and benefits accruing under all Assumed Permits, and all pending applications therefor (except to the extent primarily related to any Excluded Assets);

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

(l) all other rights of Sellers against third parties (including suppliers, vendors, merchants, distributors, manufacturers and counterparties to leases, licensees, licensors or of any Seller arising under or related to any Assumed Contract, other Purchased Asset or Assumed Liability), including causes of action, claims, counterclaims, defenses, credits, rebates (including any vendor or supplier rebates), demands, allowances, refunds, rebates, credits, allowances, Proceedings, rights of set off, rights of recovery, rights of subrogation, rights of recoupment, rights under or with respect to express or implied guarantees, warranties, representations, covenants or indemnities made by such third parties or other similar rights, in each case at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent, including the Purchased Avoidance Actions, but excluding (i) the EPI Causes of Action and (ii) the proceeds of all directors' and officers' liability insurance policies of the Sellers, including any tail insurance policies and rights of the directors and officers thereunder for coverage (i.e., advance of expenses and liability coverage with respect to claims made against such offices and directors);



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

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

(o) all rights and obligations under non-disclosure, confidentiality, non-compete, non-interference, non-solicitation, and similar arrangements or Contracts with any current or former employees and/or agents of Sellers or with third parties (except to the extent primarily related to any Excluded Assets);

(p) all of the Sellers' telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names (except to the extent primarily related to any Excluded Assets);

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

(r) all IT Assets; and

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

**Section 2.2 Excluded Assets.** Notwithstanding Section 2.1, Buyer expressly understands and agrees that Buyer is not purchasing or acquiring, and the Sellers are not selling or assigning, any of the following assets, properties and rights of Sellers (the "Excluded Assets").

(a) all of the Sellers' right, title and interest in and to the products listed on Schedule 2.2(a) and all of the other Products of Sellers (other than those included in the Development Assets and the Assumed Commercial Business Assets) and all Intellectual Property, Equipment, supplies and materials, Business Authorizations and Product Registrations (including new drug applications), files, records (including clinical and pre-clinical data), know-how, manufacturing assets and leases primarily related to the same (collectively, the "Excluded Commercial Business Assets");

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

(c) all cash, cash equivalents, bank deposits and similar cash items of Sellers, and all bank accounts of Sellers (other than as described in Section 2.1(h));

(d) all Leases (and related Leased Real Property, if any) and Contracts, in each case, other than Assumed Contracts;

(e) all Permits other than the Assumed Permits;

(f) all of Sellers' certificates of incorporation, certificates of formation, bylaws, limited liability company operating agreements and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, unit certificates and other documents relating to the organization, maintenance and existence of any Seller as a corporation, limited liability company or other entity;

(g) all shares of capital stock, limited liability company interests or other equity securities of any Seller or any of their respective Subsidiaries or securities convertible into, exchangeable, or exercisable for any such shares of capital stock, limited liability company interests or other equity securities of any Seller or any of their respective Subsidiaries;

(h) all net operating losses of any Seller;

(i) the Excluded Claims;

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

(k) any (1) Records containing confidential personal private information including confidential personnel and medical Records pertaining to any Current Employees or Former Employees to the extent the disclosure of such information is prohibited by applicable Law, (2) other Records that Sellers are required by Law to retain, (3) any materials primarily related to any Excluded Assets or Excluded Liabilities, (4) all taxpayer and other identification numbers of each Seller, and (5) any Records or other documents relating to the Chapter 11 Cases that are protected by the attorney-client privilege; provided that Buyer shall have the right to make copies of any portions of such retained Records (other than the Records referenced in subsection (5)) to the extent that such portions relate to the business of the Sellers or any Purchased Asset;

(l) all Permits other than the Assumed Permits;

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

(n) all Employee Benefit Plans, including all assets held with respect to such Employee Benefit Plans and any insurance contracts, administrative services agreements or funding arrangements related thereto;

(o) all estate claims of the Sellers (other than the Purchased Avoidance Actions);

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

(q) all of the Sellers' telephone numbers, fax numbers, e-mail addresses, websites, social media accounts, URLs and internet domain names used primarily for the Excluded Commercial Business Assets, including the telephone number 1-800-499-4468;

(r) all Inventory, tangible assets (including Equipment, accessories, materials and all other similar items of tangible personal property or capital assets), Records (including Records related to Taxes paid or payable by any Seller related to the business of the Sellers), and rights and obligations under non-disclosure, confidentiality, non-compete, non-interference, non-solicitation, and similar arrangements or Contracts with any current or former employees and/or agents of Sellers or with third parties, in each case to the extent primarily relating to the Excluded Assets referenced in Sections 2.1(c), 2.1(f), 2.1(g) and 2.1(o).

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

**Section 2.3 Assumption of Assumed Liabilities.** On the terms and subject to the conditions of this Agreement and the Sale Order, at the Closing (or, with respect to Assumed Liabilities under Assumed Contracts or Assumed Permits that are assumed by Buyer after the Closing, such later date of assumption as provided in Section 2.6 and Section 2.7), Buyer shall assume from Sellers (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and Sellers shall irrevocably convey, transfer, and assign to Buyer, the following Liabilities, without duplication and only to the extent not paid prior to the Closing and no other Liabilities (collectively, the "Assumed Liabilities"):

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

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

(c) Liabilities primarily arising out of the ownership or operation of the Purchased Assets, in each case, by Buyer solely to the extent arising from periods occurring on or after the Closing Date; and

(d) all Liabilities for Taxes relating to the Purchased Assets or the Assumed Liabilities to the extent that such Taxes are imposed with respect to or attributable to any taxable period (or portion thereof) beginning on or after the Closing Date.

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

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

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

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

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

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

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

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

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

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

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

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

## **Section 2.5 Consideration.**

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

- i. the Bid; and
- ii. the assumption by Buyer of the Assumed Liabilities.

(b) The Purchase Price shall be satisfied at the Closing as to:

i. the Bid, by causing the DIP Lender to (A) acknowledge satisfaction of the portion of the DIP Indebtedness covered by the Bid and (B) to the extent the Bid covers all DIP Indebtedness, release all security interests and liens securing the DIP Indebtedness (collectively, (i)(A) and (i)(B) above, the “Bid And Release”); and

ii. the amount of the Assumed Liabilities described in Section 2.3, by assuming such Assumed Liabilities through one or more Related Agreements.

(c) Buyer shall not reallocate any of the initial amounts offered in the Commercial Business Assets Bid to the initial amounts offered for the Development Assets Bid or vice versa, but for the avoidance of doubt, Buyer may increase the amount of the Commercial Business Assets Bid and/or the Development Assets Bid in subsequent bidding at Auction or otherwise with incremental consideration above the Buyer’s aggregate \$12,150,000 million Purchase Price.

**Section 2.6 Assumption and Assignment of Contracts.**

(a) The Assumed Contract List sets forth a list of all Contracts and Leases to which a Seller is a party or by which any of their properties or assets are bound and which Buyer has designated to be included as an Assumed Contract, together with estimated Cure Amounts for each Assumed Contract, with such Cure Amounts as agreed to among the various counterparties, Sellers and Buyer, or as determined by the Sale Order or such other Order of the Bankruptcy Court. From time to time prior to the Auction, and as reasonably requested by Buyer in the manner requested by Buyer, Sellers shall update the Assumed Contract List.

(b) In connection with the assumption and assignment to Buyer of any Assumed Contract pursuant to this Section 2.6:

i. the cure amounts, if any, necessary to cure all defaults, if any, and to pay all actual pecuniary losses, if any, that have resulted from such defaults under the Assumed Contracts (such amounts, the “Cure Amounts”), in each case as of the Petition Date and to the extent required by Section 365(b) of the Bankruptcy Code and the Sale Order or any other Order of the Bankruptcy Court (or as agreed by the applicable counterparties and the Sellers and Buyer) shall be paid as follows:

- (A) Sellers shall be financially responsible for all Cure Amounts in connection with any Assumed Liabilities with respect to the Development Assets subject to paragraph 22 of the Sale Procedures Order; and
- (B) Buyer shall be financially responsible for all Cure Amounts in connection with any Assumed Liabilities with respect to (1) all Assumed Commercial Business Assets and (2) all Development Assets but only with respect to Cure Amounts

in excess of Sellers' payment obligations in respect of Cure Amounts;

provided that neither the Cure Amounts paid by Buyer nor any other expense or obligation set forth in this Section 2.6(b) shall reduce, directly or indirectly, any consideration payable to Sellers hereunder; and

ii. Buyer shall provide sufficient adequate assurance of future performance as of the Sale Hearing necessary to satisfy the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to Assumed Contracts.

(c) Sellers shall use their respective reasonable best efforts to assign the Assumed Contracts to Buyer on the terms set forth in this Section 2.6 pursuant to the Sale Order or such other Order of the Bankruptcy Court. In the event Sellers are unable to assign any such Assumed Contract to Buyer pursuant to the Sale Order or such other Order of the Bankruptcy Court or by agreement among the applicable counterparties and the Sellers and the Buyer, then the Parties shall use their reasonable best efforts to obtain, and to cooperate in obtaining, all Consents from Governmental Entities and third parties necessary to assume and assign such Assumed Contracts to Buyer, including payment of Cure Amounts in accordance with Section 2.6(b).

(d) Notwithstanding the foregoing, but subject to Section 2.7 and Section 5.1, a Contract shall not be an Assumed Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Contract (i) is rejected by a Seller or terminated by a Seller in accordance with the terms hereof or by the other party thereto, or terminates or expires by its terms, on or prior to the Closing and is not continued or otherwise extended upon assumption; provided, however, that the foregoing shall be subject to the terms of the DIP Facility; or (ii) was not listed on the Assumed Contract List and not provided by Buyer to Sellers at least 14 calendar days prior to the Auction and requires a Consent of any Governmental Entity or other third party (except as permitted by the Bankruptcy Code) in order to permit the sale or transfer to Buyer of Sellers' rights under such Contract, and no such Consent has been obtained prior to the Closing. In addition, a Permit shall not be assigned to, or assumed by, Buyer to the extent that such Permit requires a Consent of any Governmental Entity or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Buyer of Sellers' rights under such Permit, and no such Consent has been obtained prior to the Closing.

## **Section 2.7 Schedule Updates.**

(a) Notwithstanding anything to the contrary in this Agreement, and without any increase or decrease in the Purchase Price (other than any resulting increase or decrease in Cure Amounts that are the responsibility of Buyer in accordance with Section 2.6), the Buyer may, in its sole discretion, revise, amend or modify this Agreement and any schedule setting forth the Purchased Assets and the Excluded Assets up to two (2) Business Days

prior to the Closing to (i) include in the definition of Purchased Assets (pursuant to the applicable schedule) and to exclude from the definition of Excluded Assets, any Contract or other asset of the Sellers not previously included in the Purchased Assets and require (A) the Sellers to file a notice of assumption and assignment with the Bankruptcy Court, and fix the Cure Amount either by the Sale Order or such other Order of the Bankruptcy Court or as agreed by the applicable counterparty and the Sellers and the Buyer; and (B) the Sellers to provide any necessary notice to the Parties to any such Contract and (ii) to exclude from the definition of Purchased Assets (pursuant to the applicable schedule) and to include in the definition of Excluded Assets, any Assumed Contract or other asset of the Sellers previously included in the Purchased Assets and not otherwise included in the definition of Excluded Assets; provided that no such change of a schedule, the definition of the Purchased Assets or the definition of the Excluded Assets shall reduce the amount of the Purchase Price below the amount of the Bid.

(b) If any Contract is added to (or removed from) the Assumed Contract List and thereby added to (or removed from) the Purchased Assets as permitted by this Section 2.7, the Sellers shall promptly take such steps as are reasonably necessary, including, if applicable, making any necessary or appropriate updates to the Assumed Contract List (provided that the Parties shall be obligated to pay Cure Amounts in accordance with Section 2.6) and prompt delivery of notice to the non-debtor counterparty, to cause such Contracts to be assumed by the Sellers, and assigned to the Buyer, on the Closing Date (other than as excluded under the Sale Order and this Agreement).

(c) If any Contract is removed from the Purchased Assets as permitted by this Section 2.7, all Liabilities to third parties arising under such Contract shall be Excluded Liabilities. Without limiting any of the Buyer's rights pursuant to this Section 2.7, in the event that the Sale Order does not approve the assignment or transfer of one or more of the Assumed Contracts to the Buyer as Purchased Assets, the Buyer may, in its sole discretion and at any time prior to the Auction, exclude any or all of the Assumed Contracts from the Purchased Assets but may not reduce the amount of the Purchase Price.

(d) For all purposes of this Agreement (including all representations and warranties of the Sellers contained herein), the Sellers shall be deemed to have obtained all required consents in respect of the assignment of any Assumed Contract and to have cured all defaults thereunder if, and to the extent that, pursuant to the Sale Order or other order of the Bankruptcy Court, the Sellers are authorized and directed to assume and assign the Assigned Contracts to Buyer pursuant to Section 365 of the Bankruptcy Code. For the avoidance of doubt, each Contract that is not an Assumed Contract may be rejected by the Sellers in their sole and absolute discretion, subject to approval by the Bankruptcy Court. Without limiting the foregoing, the failure by the Sellers to disclose any matter related to any Assumed Contract added to the Assumed Contract List after the Execution Date shall not be considered a breach of any representations and warranties of the Sellers.

**Section 2.8 Closing.** The Closing shall take place remotely by electronic exchange of counterpart signature pages commencing at 10:00 a.m. Eastern time on the Closing Date.



**Section 2.9 Deliveries at Closing.**

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

- i. a counterpart signature page to the Bill of Sale and Assignment and Assumption Agreement, duly executed by each Seller;
- ii. a counterpart signature page to each of the Intellectual Property Assignments, duly executed by each Seller, as applicable;
- iii. a counterpart signature page to the Lease Assignment, duly executed by the applicable Seller;
- iv. a properly completed and duly executed IRS Form W-9 from each Seller;
- v. the officer's certificate required to be delivered pursuant to Section 7.1(g), in each case duly executed by each applicable signatory thereto; and
- vi. a counterpart signature page to the Transition Services Agreement (if applicable), duly executed by each Seller.

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

- i. a counterpart signature page to the Bill of Sale and Assignment and Assumption Agreement, duly executed by Buyer;
- ii. a counterpart signature page to each of the Intellectual Property Assignments, duly executed by Buyer;
- iii. a counterpart signature page to the Lease Assignment, duly executed by Buyer;
- iv. the Purchase Price, in the form of the Bid And Release, in form reasonably satisfactory to the Sellers (including documentation reasonably acceptable to the Sellers evidencing satisfaction of the DIP Indebtedness);
- v. the officer's certificate required to be delivered pursuant to Section 7.2(e), duly executed by the applicable signatory thereto; and
- vi. a counterpart signature page to the Transition Services Agreement (if applicable), duly executed by Buyer.

**Section 2.10 Allocation.** Within 90 calendar days after the Closing Date, Buyer shall in good faith prepare an allocation of the Purchase Price (and all capitalized costs and other amounts

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

### **ARTICLE III SELLERS' REPRESENTATIONS AND WARRANTIES**

Sellers hereby represent and warrant to Buyer as of the Execution Date and as of the Closing Date that, except as set forth in (i) the Company SEC Documents filed on or after January 1, 2022 and publicly available prior to the Execution Date (other than any disclosures contained under the captions "Risk Factors" or "Forward-Looking Statements," and any other disclosures that are predictive, cautionary or forward-looking in nature but, for the purpose of clarification, including and giving effect to any factual or historical statements included in any such statements), and (ii) the disclosure schedule accompanying this Agreement (the "Disclosure Schedule"), the statements contained in this Article III are true and correct.

#### **Section 3.1 Organization of Sellers; Good Standing.**

(a) Each Seller is duly incorporated or organized, as applicable, validly existing and in good standing under the Laws of its state of incorporation or formation, as applicable, and has all requisite corporate, limited liability company or similar power and authority, as applicable, to own, lease and operate its properties and assets and to carry on and conduct the business of the Sellers as currently conducted.

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

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

(d) Each of the Subsidiaries of each of the Sellers are set forth on Schedule 3.1(c) of the Disclosure Schedule. Except as set forth on Schedule 3.1(c) of the Disclosure Schedule, none of the Sellers owns any Subsidiaries or shares of capital stock or other equity interests in any other Person.

**Section 3.2 Authorization of Transaction.**

(a) Each Seller has all requisite corporate or limited liability company power and authority, as applicable, to execute and deliver this Agreement and all Related Agreements to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and all Related Agreements to which a Seller is a party have been duly authorized by such Seller and no other corporate or limited liability company action on the part of any Seller is necessary to authorize this Agreement or the Related Agreements to which it is party or to consummate the Contemplated Transactions.

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

**Section 3.3 Noncontravention; Consents and Approvals.**

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

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

**Section 3.4 Compliance with Laws.** Sellers and all of the Purchased Assets are in compliance with all Laws applicable to the business of the Sellers or the Purchased Assets in all material respects. Sellers have not received any written notice of violation of any Law with respect to any Seller, the business of the Sellers or the Purchased Assets.

**Section 3.5 Title to Purchased Assets.** Sellers, as of immediately prior to the Closing, have good and valid title to, or, in the case of leased assets, have valid and enforceable leasehold interests in (subject to the effect on enforceability of (a) any applicable Law relating to bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or preferential transfers, or similar Laws relating to or affecting creditors' rights generally and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law)), the Purchased Assets, free and clear of all Liens (except for Permitted Liens), subject to entry of the Sale Order. At the Closing or such time as title is conveyed under Section 2.6, Sellers will convey, subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, good and valid title to, or valid leasehold interests in, all of the Purchased Assets, free and clear of all Liens (except for Permitted Liens), to the fullest extent permissible under section 363(f) of the Bankruptcy Code and subject to the rights of licensees under section 365(n) of the Bankruptcy Code. Except for the services and rights to be provided or granted to Buyer and its Affiliates pursuant to the Transition Services Agreement, if applicable, the Purchased Assets constitute substantially all of the properties, assets and rights used by the Sellers to conduct and operate the business of the Sellers in all material respects as currently conducted and operated by the Sellers. All of the Purchased Assets are in good working condition, order and repair (ordinary wear and tear excepted) for assets of comparable age and past use and are suitable for use in the Ordinary Course of Business to operate the business of the Sellers substantially as currently conducted and operated by the Sellers. Except as set forth on Schedule 3.5, no Subsidiaries of any Seller hold any assets, properties or rights, and no other Person is engaged in the operation of, or hold rights, title and interest in (except for Permitted Liens) the Purchased Assets.

**Section 3.6 Contracts.** For purposes of this Agreement, "Material Contract" means any Contract to which any Seller is a party or by which any Seller or any of their respective properties or assets is bound (in each case, excluding any Employee Benefit Plan) that is required to be disclosed and filed as an exhibit to the Company SEC Documents pursuant to the Exchange Act.

All Material Contracts have been filed with the Company SEC Documents. No Seller has assigned, delegated or otherwise transferred to any third party any of its rights or obligations with respect to any Material Contract. Each Assumed Contract is valid and binding on Sellers to the extent such Person is a party thereto, as applicable, and to Sellers' Knowledge, each other party thereto, and is in full force and effect, assuming entry of the Sale Order. Each Seller and, to Sellers' Knowledge, any other party thereto have performed all material obligations required to be performed by it under each Assumed Contract except to the extent such default or violation will be cured as a result of the payment of the applicable Cure Amounts, assuming entry of the Sale Order. The Assumed Contracts include all Contracts material to the ownership and/or operation of the business of Sellers. Sellers have not, and, to Sellers' Knowledge, no other party to any Assumed Contract has, commenced any action against any of the Parties to any Assumed Contract or given or received any written notice of any default or violation under any Assumed Contract that has not been withdrawn or dismissed except to the extent such default or violation will be cured as a result of the payment of the applicable Cure Amounts, assuming entry of the Sale Order. To Sellers' Knowledge, there are no events or conditions which constitute, or, after notice or lapse of time or both, will constitute a default on the part of any Seller, or to Sellers' Knowledge, any counterparty under such Assumed Contract. To Sellers' Knowledge, no Seller has received any notice from any Person that such Person intends to terminate, or not renew, any Assumed Contract. Each Assumed Contract is, or will be upon the Closing, valid, binding and in full force and effect in accordance with its terms.

### **Section 3.7 Intellectual Property.**

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

(b) Title, Etc. Each Seller has good and valid right, title and interest in and to and is the sole and exclusive owner of (free and clear of any Liens) Owned Intellectual

Property or has a license to use Intellectual Property owned by any third party that is required by such Seller to conduct its business as currently conducted. All Intellectual Property included in the Owned Intellectual Property is unexpired and subsisting and properly recorded with the appropriate Governmental Entity, and no Owned Intellectual Property is subject to any outstanding order, judgment, determination, decree or agreement issued by or with any Governmental Entity adversely affecting such Seller's use of, or its rights, to such Owned Intellectual Property, and such Seller has not received any written notice of any of the foregoing. There are no Proceedings outstanding or, to the Sellers' Knowledge, threatened that seeks to challenge or limit such Seller's ownership of, or right to use or enforce any Owned Intellectual Property.

(c) Infringement. The conduct of the Sellers' business, including the design, development, use, import, export, branding, advertising, promotion, marketing, manufacture, offer for sale, and sale of the Products, does not infringe, misappropriate, or conflict with any Intellectual Property of any Person or constitute unfair competition or trade practices under the laws of any jurisdiction. There are no Proceedings outstanding or, to the Sellers' Knowledge, threatened, and no Seller has received any written notice or claim during the three years prior to Closing, alleging that the conduct of its business infringes the Intellectual Property rights of any Person. There is, and there has been, no unauthorized use, infringement or misappropriation of any Owned Intellectual Property by any Person, including any Current Employee or Former Employee, and no Seller has issued any written notice or claim asserting that any such unauthorized use, infringement or misappropriation is occurring or has occurred.

(d) Invention Assignments and Confidentiality. All Current Employees and Former Employees, as well as consultants or other independent contractors, of the Sellers who have been engaged in the past or are presently engaged in any research, development, design or similar services that involve the creation of any Owned Intellectual Property have irrevocably assigned that Person's rights in such Owned Intellectual Property pursuant to invention assignment agreements and have entered into customary confidentiality agreements with the applicable Seller, in each case substantially in the form or forms that have been delivered to Buyer.

(e) IT Assets. No Person has gained unauthorized access to any of the IT Assets owned, controlled or used by any Seller that has resulted in material Liability to the operation or control of the Purchased Assets. The IT Assets used by the Sellers in the conduct of the business of the Sellers (i) operate and perform in all material respects in accordance with their documentation and functional specifications and otherwise as required by its business as presently conducted, (ii) have not malfunctioned or failed in a manner to materially adversely affect the conduct of its business within the three years prior to the Execution Date and (iii) are free from material bugs or other material defects.

(f) Privacy and Security Policies. Each Seller has established and implemented written policies regarding privacy, cyber security and data security that are commercially reasonable, and consistent in all material respects with (i) reasonable practices in the industry of the Sellers and (ii) the written commitments of the Sellers. Each Seller has

complied in all material respects with (x) all Laws, rules and regulations regarding data protection and the privacy and security of personal information applicable to the Sellers in the operation of the business of the Sellers, and (y) its privacy policies or commitments to customers and consumers regarding data protection and the privacy and security of personal information. No Person has gained unauthorized access to or misused any personal information in a manner that, individually or in the aggregate, has resulted in a material Liability to the operation or control of the Purchased Assets or an obligation of the Sellers to notify a Governmental Entity.

**Section 3.8 Proceedings.** Other than the Chapter 11 Cases, Schedule 3.8 of the Disclosure Schedule sets forth all unresolved Proceedings brought by or against any Seller, and to Sellers' Knowledge, there are no other Proceedings threatened in writing against any Seller which is reasonably likely to adversely affect the ability of any Seller to enter into this Agreement or to consummate the Contemplated Transactions.

**Section 3.9 Employees and Employment Matters.**

(a) No Seller is a party to or bound by any collective bargaining agreement covering the Current Employees (as determined as of the Execution Date), nor is any Seller aware of any ongoing strike, walkout, work stoppage, or other material collective dispute affecting any Seller with respect to the business of the Sellers. Schedule 3.9(a) of the Disclosure Schedule sets forth a complete and correct list of all Current Employees by: name; title or position; status (part-time, full-time, exempt, non-exempt, etc.); whether paid on a salaried, hourly or other basis; current base salary or wage rate; current target bonus; start date; service reference date (if different from the start date); work location; accrued paid time off; and an indication of whether or not such employee is on leave of absence (the "Employee Roster").

(b) There are no grievances or unfair labor practice complaints pending against the Sellers or any of their Subsidiaries before the National Labor Relations Board or any other Governmental Entity with respect to any employees of Sellers.

(c) Sellers are not liable for any arrears of wages, other compensation or benefits (other than such Liabilities that have been incurred in the Ordinary Course of Business), or any Taxes or penalties for failure to comply with any employment Laws.

(d) No individual who has performed services for Sellers with respect to the business of the Sellers has been improperly excluded from participation in any Employee Benefit Plan, and none of the Sellers has any direct or indirect Liability, whether absolute or contingent, with respect to any misclassification of any Person as an independent contractor or on any other non-employee basis for such Seller rather than as an employee, with respect to any individual employed, engaged, or leased by the Seller from another employer, or with respect to any misclassification of any employee as exempt versus non-exempt under the Fair Labor Standards Act.

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

(f) All employees of Sellers are authorized to work in the United States.

(g) Except as set forth on Schedule 3.9(g) of the Disclosure Schedule, During the 90-day period prior to the Execution Date, there have been no involuntary terminations of employment of any employees of Sellers.

**Section 3.10 Employee Benefit Plans.** With respect to each Employee Benefit Plan, the Sellers have made available to Buyer true and complete copies (to the extent applicable) of (i) the current plan document (or, if such Employee Benefit Plan is unwritten, a written description of the material terms thereof), including any amendments thereto other than any document that Sellers are prohibited from making available to Buyer as the result of applicable Law relating to the safeguarding of data privacy, (ii) the most recent annual report on Form 5500 filed with the Department of Labor, (iii) the most recent IRS determination or opinion letter received by the Sellers, (iv) the most recent summary plan description, (v) each current material related insurance Contract or trust agreement, (vi) the most recent actuarial report, financial statement and trustee report, and (vii) all non-routine correspondence with the IRS or United States Department of Labor since January 1, 2020.

**Section 3.11 Real Property.**

(a) Sellers do not own any real property.

(b) Schedule 3.11(b) of the Disclosure Schedule sets forth the address of each Leased Real Property, and a true and complete list of all Leases that are Assumed Contracts (including the date and name of the Parties to such Lease document). Sellers have made available to Buyer a true and complete copy of all Leases that are Assumed Contracts (including all amendments, extensions, renewals, guaranties and other agreements with respect thereto) for such Leased Real Property, as amended through the Execution Date. With respect to each of the Leases that are Assumed Contracts: (i) Sellers' possession and quiet enjoyment of the Leased Real Property under such Lease has not been disturbed in any material respect, and there are no pending disputes with respect to Sellers' obligations under such Lease that will not be satisfied by the Sale Order; (ii) no security deposit or portion thereof deposited with respect such Lease has been applied in respect of a breach or default under such Lease which has not been redeposited in full; (iii) the other party to such Lease is not an affiliate of Sellers; and (iv) the Sellers have not subleased, licensed or otherwise granted any Person the right to use or occupy such Leased Real Property or any portion thereof.



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

(d) Sellers have received no written notice of any condemnation, expropriation or other proceeding in eminent domain pending or, to Sellers' Knowledge, which is threatened, affecting any real property underlying the Leased Real Property or any portion thereof or interest therein.

**Section 3.12 Tangible Personal Property.** Schedule 3.12 of the Disclosure Schedule sets forth all material Personal Property Leases, and each such material Personal Property Lease is valid and enforceable.

**Section 3.13 Permits; Certifications.**

(a) Schedule 3.13(a) of the Disclosure Schedule contains a list of all material Permits (other than any Business Authorizations and Product Registrations) that Sellers hold as of the Execution Date in connection with the operations of the business of the Sellers. All such Permits are valid and are in full force and effect and will continue to be so upon Closing. As of the Execution Date, there are no Proceedings pending or, to Sellers' Knowledge, threatened in writing that seeks the revocation, cancellation, suspension, failure to renew or adverse modification of any Assumed Permits, except where a failure of this representation and warranty to be so true and correct would not have a Material Adverse Effect on the ownership and operation of the business of Sellers. All required filings and maintenance obligations with respect to the Assumed Permits have been made or met, all fees and charges with respect to the Assumed Permits have been paid in full, and all required applications for renewal thereof have been filed, except where a failure of this representation and warranty to be so true and correct would not have a Material Adverse Effect on the ownership and operation of the business of Sellers.

(b) All Products, including the Inventory, have been manufactured, packaged, labeled, tested, stored, shipped, handled, warehoused, and distributed in compliance in all material respects with all Laws, Permits, and Product Registrations.

**Section 3.14 Purchased Inventory.**

(a) No Inventory that is Purchased Inventory is materially damaged in any significant way, except for any such damage which would not be material to the Purchased Inventory taken as a whole.

(b) No Product has been or has been requested by a Governmental Entity to be recalled, withdrawn, removed, suspended, seized, the subject of a corrective action, or discontinued (whether voluntarily or otherwise) (collectively "Recall"). Neither the Sellers, nor, to the Sellers' Knowledge, any Governmental Entity or other Person, has sought, is seeking, or, to the Sellers' Knowledge, has or is currently threatening or contemplating any Recall of a Product. No Product has been subject to any safety alerts,

field notifications, or other written notification of misbranding or adulteration, and neither the Sellers, nor, to the Sellers' Knowledge, any Governmental Entity or other Person, has sought, is seeking, or, to the Sellers' Knowledge, has threatened any such alert or notice.

(c) The Purchased Inventory is free and clear of all Liens (other than Permitted Liens) and is in material compliance with United States federal and applicable state Laws for such products as of the Execution Date, except for any such noncompliance which would not be material to the Purchased Inventory taken as a whole.

(d) The Purchased Inventory is (i) in good, usable and currently marketable condition in the Ordinary Course of Business, and (ii) salable in the Ordinary Course of Business at the carrying value of such Inventory, as shown in the books and records of the Sellers in the Ordinary Course of Business, in accordance in all material respects with all applicable Laws, as the case may be.

### **Section 3.15 Environmental Matters.**

(a) Each Seller is, and has been during the three years prior to the Execution Date, in compliance in all material respects with all applicable Environmental Laws, which compliance has included obtaining and maintaining all permits, licenses and authorizations required under applicable Environmental Laws.

(b) No Seller has received during the three years prior to the Execution Date written notice from any Governmental Entity or third party regarding any actual or alleged violation of or Liability under Environmental Laws.

(c) No Hazardous Substance has been released at any current or former Leased Real Property, or other real property, by Sellers in material violation of any Environmental Law.

### **Section 3.16 Financial Statements; SEC Filings.**

(a) The consolidated financial statements of Novan (including all related notes or schedules) included or incorporated by reference in the Company SEC Documents, as of their respective dates of filing with the SEC (or, if such Company SEC Documents were amended prior to the Execution Date, the date of the filing of such amendment, with respect to the consolidated financial statements that are amended or restated therein), (i) have been prepared in all material respects in accordance with GAAP (except, in the case of unaudited quarterly statements, as permitted by Form 10-Q of the SEC or other rules and regulations of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or as permitted by Regulation S-X), and (ii) fairly present the consolidated financial position of Novan and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods shown).

(b) Since January 1, 2022, Novan has, in all material respects, timely filed with or otherwise furnished (as applicable) to the SEC all registration statements, prospectuses, forms, reports, certifications, proxy statements, schedules, statements and documents required to be filed or furnished by it with the SEC under the Securities Act or the Exchange Act, as the case may be (such documents and any other documents filed or furnished by Novan with the SEC since January 1, 2022 as have been supplemented, modified or amended since the time of filing, collectively, the “Company SEC Documents”). None of Novan’s Subsidiaries is required to file periodic reports with the SEC. To Sellers’ Knowledge, as of the Execution Date, none of the Company SEC Documents is the subject of ongoing SEC review or outstanding SEC investigation.

**Section 3.17 Brokers’ Fees.** Except for amounts due to Raymond James Securities LLC (which amounts are to be paid by the Seller), no Seller has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated to pay.

**Section 3.18 No Other Agreements to Purchase.** Sellers have not entered into any agreement with any other Person (written or oral) which grants such third party the right or option purchase or acquire from Sellers any Purchased Asset, other than purchase orders for Inventory accepted by Sellers in the Ordinary Course of Business.

**Section 3.19 Taxes.**

(a) All income and other material Tax Returns (including any IRS Forms W-2 or Forms 1099) required to be filed by or on behalf of Sellers and all Tax Returns required to be filed in respect of the Purchased Assets have been timely filed, and all such Tax Returns are true, correct and complete in all material respects. All income and other material Taxes of Sellers, whether or not shown on any Tax Return, have been timely paid. Sellers have complied in all material respects with all applicable withholding obligations for Taxes required to have been withheld in connection with amounts paid to any employee, independent contractor, creditor, stockholder or other third party.

(b) There are no pending, proposed in writing or threatened in writing audits or other proceedings with respect to any Taxes payable by or asserted against Sellers. All deficiencies for Taxes asserted or assessed in writing against Sellers have been fully and timely (within any applicable extension periods) paid, or settled.

(c) There are no Liens for Taxes on the Purchased Assets other than Permitted Liens.

(d) There are currently no Proceedings with regard to a material amount of Taxes of Sellers, and Sellers have not received written notice or announcement of any audits or other Actions with respect to a material amount of Taxes.

(e) Neither Seller has been a party to a “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b)(2) (or similar provisions of state, local or non-U.S. Law) with respect to the Purchased Assets.

(f) No claim in writing has been made by any Governmental Entity in a jurisdiction where a Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction with respect to the Purchased Assets.

**Section 3.20 Business Authorizations; Product Safety and Liability.**

(a) Each Seller owns, holds or lawfully uses (either directly or through its distributors) all authorizations and Permits which are necessary for the ownership, operation or use of the Purchased Assets or the conduct of the business of Sellers, except as would not be material (the “Business Authorizations”), including all Business Authorizations required for the manufacturing, packaging, marketing, promotion, commercialization, testing, clinical investigation, distribution, or sale of the Products (collectively, the “Product Registrations”). Schedule 3.20(a) of the Disclosure Schedule sets forth all Business Authorizations and Product Registrations held by each Seller (organized by Product and country). Each Business Authorization and Product Registration is valid and subsisting and in full force and effect and, subject to satisfaction of applicable consent, notice, transfer, change of ownership or similar requirements under applicable Laws, will continue to be so upon Closing, and each Seller is in compliance in all material respects with the respective terms, conditions and obligations of each such Business Authorization and Product Registration. All fees and charges with respect to such Business Authorizations and Product Registrations, as of the Execution Date, have been paid in full and all filing, reporting, and maintenance obligations have been completely and timely satisfied, except, in each case, where failure would be not be material. There are no Proceedings pending or, to the Sellers’ Knowledge, threatened, that would result in the termination, revocation, suspension or the imposition of a restriction or other materially adverse action on any such Business Authorization or Product Registration or the imposition of any fine, penalty or other sanction for violation of any such Business Authorization or Product Registration.

(b) Each Seller is, and has been, in material compliance with all applicable Laws, Business Authorizations and Product Registrations, including all applicable Laws, Business Authorizations and Product Registrations administered or issued by the FDA or any other Governmental Entity. In the five years prior to the Execution Date, no Seller has received any written notice to the effect that such Seller, the business of the Sellers or the Purchased Assets are or may not be in compliance in all material respects with any Law, Business Authorization or Product Registration.

(c) In the five years prior to the Execution Date, no Seller has received any written notice of inspectional observations or other noncompliance, including on a Form FDA 483, warning letters, untitled letters, cyber letters, reprimand, regulatory letter, Establishment Inspection Report, notice of an integrity review, notice of an investigation, request for corrective of remedial action, notice of other adverse finding, notice of

deficiency or violation, inspection or audit reports, or similar written communications from any Governmental Entity indicating a failure to comply with applicable Laws that has not been resolved.

(d) As required under applicable Law or pursuant to a Permit, Business Authorization, or Product Registration, in the five years prior to the Execution Date, Sellers have maintained, filed, or furnished to the applicable Governmental Entity or Person all material filings, documents, claims, reports, notices, and other submissions (collectively “Reports”), required to be maintained, filed, or furnished on a timely basis, and, at the time of maintenance, filing, or furnishing all such Reports were complete and accurate in all material respects, or were subsequently updated, changed, corrected, or modified, except, in each case, where failure would not be material.

(e) In the five years prior to the Execution Date, neither Sellers nor any officer or, to the Sellers’ Knowledge, agent or employee of any Seller has made any untrue or misleading statement of material fact or fraudulent statement to the FDA or any other Governmental Entity, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Entity, or committed an act, made a statement, or failed to make a statement that would reasonably be expected to provide a basis, if such failure was known to the FDA, for the FDA or any other Governmental Entity to invoke its policy respecting “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities,” as set forth in 56 Fed. Reg. 46191 (September 10, 1991) (and any amendments thereto), in each case relating to the business of the Sellers or the Purchased Assets. Neither Sellers nor any Person providing services to Sellers has ever been investigated by the FDA or other Governmental Entity for data or healthcare program fraud. In the five years prior to the Execution Date, neither Sellers nor, to the Sellers’ Knowledge, any Person providing services to Sellers is the subject of any pending or, to the Sellers’ Knowledge, threatened investigation pursuant to the FDA Ethics Policy, or resulting from any other untrue or false statement or omission.

(f) Neither Sellers, nor, to the Sellers’ Knowledge, any Person providing services to Sellers, nor, to the Sellers’ Knowledge, their respective officers, directors, partners, employees, or agents have been:

- i. debarred or suspended pursuant to 21 U.S.C. § 335a;
- ii. excluded under 42 U.S.C. § 1320a-7 or any similar Law of any Governmental Entity;
- iii. excluded, debarred, suspended or deemed ineligible to participate in federal procurement and non-procurement programs, including those produced by the U.S. General Services Administration;
- iv. charged, named in a complaint, convicted, or otherwise found liable in any Proceeding that falls within the ambit of 21 U.S.C. § 331, 21 U.S.C. § 333,

21 U.S.C. § 334, 21 U.S.C. § 335a, 21 U.S.C. § 335b, 42 U.S.C. § 1320a - 7, 31 U.S.C. §§ 3729 – 3733, 42 U.S.C. § 1320a-7a, or any other applicable Law;

v. disqualified or deemed ineligible pursuant to 21 C.F.R. Parts 312, 511, or 812, or otherwise restricted, in whole or in part, or subject to an assurance pursuant to 21 C.F.R. Parts 312, 511, or 812; or

vi. had a pending Proceeding, or otherwise received any written notice or other written communication from any Governmental Entity or any Person threatening, investigating, or pursuing (i)-(v) above.

(g) In the five years prior to the Execution Date, each Product is, and has been, fit for the ordinary purposes for which it is intended to be used and conforms in all material respects to any promises or affirmations of fact made in all regulatory filings pertaining thereto and made on the container or label for such Product or in connection with its sale. There is no design or manufacturing defect with respect to any Product. In the five years prior to the Execution Date, no Seller has received any written notice that such Seller has, and to the Sellers' Knowledge there is no reasonable basis for any Proceedings against such Seller for, any Liability arising out of any injury to any Person or property as a result of a Product or component thereof manufactured, sold or shipped by, or service provided by, the Sellers.

(h) For all pre-clinical studies, animal studies, and clinical trials concerning a Product, (collectively "Studies"), the study reports, protocols, and statistical analysis plans (collectively, the "Data") accurately, completely, and fairly reflects the results from and plans for the Studies in all material respects. The Sellers have no Knowledge of any other studies, the results of which are inconsistent with, or otherwise call into question, the Study results. The Sellers are not aware of any material facts or circumstances related to the safety or efficacy of any Product that would materially and adversely affect the ability to receive or maintain a Permit, Business Authorization, or Product Registration or that would otherwise delay the receipt of the same.

(i) In the five years prior to the Execution Date, neither the Sellers nor, to the Sellers' Knowledge, any Person providing services to the Sellers has received any written notice from the FDA, any other Governmental Entity, any Institutional Review Board ("IRB"), or other Person or board responsible for the oversight or conduct of any Study, requiring or threatening the termination, suspension, material modification or material restriction, delay, or clinical hold of, or otherwise rejecting any Study that was, is planned to be, or is being conducted. In the five years prior to the Execution Date, all Studies were and, if still pending, are being conducted in all material respects in accordance with all applicable Laws, good clinical practices, good laboratory practices, the protocols, procedures and controls designed and approved for such Studies, professional medical and scientific standards, and in accordance with any requirement of an IRB responsible for review of such Studies.

**Section 3.21 Health Care Laws; HIPAA Compliance.** Each Seller is and, in the five years prior to the Execution Date, has been in compliance in all material respects with all Health Care Laws applicable to it, its products and its properties or other assets or its business or operation. Each Seller and any Person acting on its behalf, has in effect all Permits, including, without limitation, all Permits necessary for it to own, lease or operate its properties and other assets and to carry on its business and operations, as presently conducted. In the five years prior to the Execution Date, neither the Sellers nor any Subsidiary thereof has made an untrue statement of a material fact or fraudulent statement to any Governmental Entity, or, to the Sellers' Knowledge, failed to disclose a material fact required to any Governmental Entity, or committed an act, or made a statement that, at the time such statement was made, would constitute a violation of any Health Care Law. As applicable, neither Seller nor any Subsidiary thereof, or any of their respective affiliates, employees or Representatives, has made any untrue statement of fact to any Governmental Entity regarding material claims incurred but not reported, in the five years prior to the Closing Date.

**Section 3.22 No Other Representations or Warranties.** Except for the representations and warranties expressly contained in this Article III (as qualified by the Disclosure Schedule and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) or in the officer's certificate required to be delivered pursuant to Section 7.1(g), none of Sellers or any other Person on behalf of any Seller makes any express or implied representation or warranty with respect to the Purchased Assets or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by the Sellers in that certain datasite administered by Datasite on behalf of Sellers or elsewhere to Buyer or any of its Affiliates or Representatives on behalf of Sellers or any of their respective Affiliates or Representatives. Except for the representations and warranties expressly contained in this Article III (as qualified by the Disclosure Schedule and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) or in the officer's certificate required to be delivered pursuant to Section 7.1(g), all other representations and warranties, whether express or implied, are hereby expressly disclaimed by Sellers. Nothing in this Section 3.22 shall limit any rights or remedies of Buyer with respect to a claim arising out of related to Fraud.

#### **ARTICLE IV BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer represents and warrants to Sellers as follows as of the Execution Date and as of the Closing Date:

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

**Section 4.2 Authorization of Transaction.**

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

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

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

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



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

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

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

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

**Section 4.8 No Other Representations and Warranties.** Except for the representations and warranties expressly contained in this Article IV or in the officer's certificate required to be delivered pursuant to Section 7.1(g), each Seller, on behalf of itself and each of its Affiliates, acknowledges and agrees that neither Buyer nor any other Person on behalf of Buyer makes, and no Seller has relied on the accuracy or completeness of any express or implied representation or warranty with respect to Buyer or with respect to any other information provided by or on behalf of Buyer.

## ARTICLE V PRE-CLOSING COVENANTS

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

### **Section 5.1 Notices and Consents.**

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

(b) Sellers and Buyer shall cooperate with one another (a) in promptly determining whether any filings are required to be or should be made or consents, approvals, permits or authorizations are required to be or should be obtained under any applicable Law in connection with this Agreement and the Contemplated Transactions and (b) in promptly making any such filings, furnishing information required in connection therewith and seeking to obtain timely any such consents, permits, authorizations,

approvals or waivers; provided, however, that Sellers' obligations hereunder shall only continue until the Chapter 11 Cases are closed or dismissed.

(c) To the extent permitted by applicable Law and the terms of the Purchased Assets, in the event any third party Consent has not been obtained by the Closing, at the Buyer's request, the Party contemplated to be transferring such Purchased Asset under this Agreement (the "Transferring Party") shall hold in trust for the Buyer, as applicable, the relevant Purchased Asset until the earlier of such time as (i) the third party Consent is obtained, (ii) the Chapter 11 Cases are closed or dismissed or (iii) Buyer elects not to assume or otherwise receive or accept assignment or other transfer of such Purchased Asset. During such time period (and subject to the availability of funds for such purpose), Buyer shall comply with all applicable covenants and obligations under the Purchased Assets, including the payment of any costs or expenses in connection therewith. Buyer shall be entitled to receive all of the benefits of the Transferring Party under the Purchased Asset. Buyer shall satisfy all Liabilities with respect to such Purchased Assets until the earlier of such time as (i) the third party Consent is obtained, (ii) the Chapter 11 Cases are closed or dismissed or (iii) Buyer elects not to assume such Purchased Asset, and shall indemnify and hold Sellers harmless with respect to any such reasonable out-of-pocket expenses arising in the Ordinary Course of Business pursuant to a budget to be reasonably agreed to by the Parties in good faith arising or otherwise relating to such period; provided that each Seller covenants and agrees that in the event of clause (iii), it will wind down such Purchased Asset as soon as commercially reasonable and shall take all commercially reasonable measures to avoid or mitigate any losses, expenses and Liabilities.

(d) Subject to the terms and conditions set forth in this Agreement and applicable Law, Buyer and Sellers shall (A) promptly notify the other Party of any communication to that Party from any Governmental Entity in respect of any filing, investigation or inquiry concerning this Agreement or the Contemplated Transactions, (B) if practicable, permit the other Party the opportunity to review in advance all the information relating to Sellers and their respective Subsidiaries or Buyer and its Affiliates, as the case may be, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the Agreement and the transactions contemplated by this Agreement and consider in good faith the other Party's reasonable comments, (C) not participate in any substantive meeting or discussion with any Governmental Entity in respect of any filing, investigation, or inquiry concerning this Agreement and the transactions contemplated by this Agreement unless it consults with the other Party in advance, and, to the extent permitted by such Governmental Entity, gives the other Party the opportunity to attend, and (D) furnish the other Party with copies of all correspondences, filings, and written communications between them and their Subsidiaries and Representatives, on the one hand, and any Governmental Entity or its respective staff, on the other hand, with respect to this Agreement and the transactions contemplated by this Agreement, provided, however, that any materials or information provided pursuant to any provision of this Section 5.1(d) may be redacted before being provided to the other Party (i) to remove references concerning the valuation of Buyer, Sellers, or any of their Subsidiaries, (ii) financing arrangements, (iii) as necessary to comply with contractual

arrangements, and (iv) as necessary to address reasonable privilege or confidentiality issues. Sellers and Buyer may, as each deems advisable and necessary, reasonably designate any commercially or competitively sensitive material provided to the other under this Section 5.1(d) as “outside counsel only.” Such materials and the information contained therein shall be given only to the outside legal counsel and any retained consultants or experts of the recipient and shall not be disclosed by such outside counsel to employees, officers or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (Sellers or Buyer, as the case may be). Each of Sellers and Buyer shall promptly notify the other Party if such Party becomes aware that any third party has any objection to the Agreement on antitrust or anti-competitive grounds.

**Section 5.2 Bankruptcy Actions.**

(a) Sellers shall have commenced the Chapter 11 Cases no later than July 18, 2023.

(b) On the Petition Date, the Sellers shall file the Sale Motion, which motion shall seek the Bankruptcy Court’s (i) entry of the Sale Procedures Order and (ii) entry of the Sale Order by no later than the Sale Order Deadline that provides the Parties, inter alia, consummate the Closing as soon as practicable after the entry of the Sale Order and no later than three days following the entry of the Sale Order, subject to the satisfaction of all conditions to the obligations of Sellers and Buyer as set forth in Article VII (other than conditions with respect to actions Sellers and/or Buyer will take at the Closing itself, but subject to the satisfaction or waiver of those conditions). The Sellers and Buyer agree, and the Sale Procedures Order shall reflect the fact that, the provisions of this Agreement are reasonable, were a material inducement to the Buyer to enter into this Agreement and are designed to achieve the highest or best offer for the Purchased Assets.

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

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

(e) Each of Buyer and Sellers shall promptly take such actions as are reasonably requested by the other party to assist in obtaining entry of the Sale Order and the Sale Procedures 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 Sellers of their obligations under this Agreement and the Related Agreements and demonstrating that Buyer is a good faith buyer under Section 363(m) of the Bankruptcy Code.

(f) [Reserved].

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

(h) Sellers shall serve a cure notice by first class mail on all non-debtor counterparties to all Non-Real Property Contracts and Leases as required by the Sale Procedures Order and provide a copy of the same to Buyer.

(i) In the event that the Bankruptcy Court has not (a) entered the Sale Procedures Order by the Applicable Deadline or (b) entered the DIP Order by the Applicable Deadline (either such event, a “Conversion Trigger Event”) in accordance with the Sale Procedures Order, the Parties shall use their respective reasonable best efforts to obtain an order of the Bankruptcy Court to enter an order approving this Agreement as a “private sale” no longer subject to overbids. Following a Conversion Trigger Event, (x) Section 7.1(f) and 8.1(k) of this Agreement shall be deemed to have become null and void, and (y) the Outside Date as defined in this Agreement shall be amended to be the date that is 30 days following the Petition Date (or, in the event the conditions to the obligations of Sellers and Buyer as set forth in Article VII (other than conditions with respect to actions Sellers and/or Buyer will take at the Closing itself) have been satisfied as of the Conversion Trigger Event and the Conversion Trigger Event occurs on a date that is less than two Business Days prior to the Outside Date (as so amended), the date that is two Business Days after the Conversion Trigger Event). In the event of a conflict between the provisions of this Section 5.2(i) and the terms of the proposed Sale Procedures Order, the terms of the proposed Sale Procedures Order shall control.

### **Section 5.3 Conduct of Business.**

(a) Except as (i) required by applicable Law, (ii) required by order of the Bankruptcy Court or restricted pursuant to the Bankruptcy Code, the DIP Order or the DIP Loan Documents, as the case may be, or (iii) expressly required by this Agreement, during the period from the Execution Date until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VIII), unless Buyer otherwise consents in writing (such consent shall not be unreasonably withheld, conditioned or delayed), the Sellers shall (i) continue to operate their businesses and the Purchased Assets in compliance with all Laws and pay all of their respective post-petition obligations in the Ordinary Course of Business in compliance with and as contemplated by the DIP Budget, (ii) use its and their commercially reasonable efforts to preserve substantially intact their goodwill and relationships with employees, suppliers, vendors, licensors, licensees, distributors, consultants, customers, and other Persons, in each case, having material relationships with Sellers (other than making any payment of any pre-petition claim except as approved by the Bankruptcy Court and as contemplated in the DIP Budget), (iii) use commercially reasonable efforts not to take, or agree to or commit to assist any other Person in taking,

any action (x) that would reasonably be expected to result in a failure of any of the conditions to the Closing or (y) that would reasonably be expected to impair the ability of Sellers or Buyer to consummate the Closing in accordance with the terms hereof or to materially delay such consummation, and (iv) shall make all post-petition payments related to Assumed Contracts (other than Cure Amounts) that become or became due or payable pursuant to the terms thereof to the extent provided in the DIP Budget.

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

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

ii. (A) issue, sell, encumber or grant any shares of the capital stock or other equity or voting interests of any Seller, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for any shares of such capital stock or other equity or voting interests, or any rights, warrants or options to purchase any shares of such capital stock or other equity or voting interests; (B) redeem, purchase or otherwise acquire any of the outstanding shares of capital stock or other equity or voting interests of any Seller, or any rights, warrants or options to acquire any shares of such capital stock or other equity or voting interests, (C) establish a record date for, declare, set aside for payment or pay any dividend on, or make any other distribution in respect of, any shares of the capital stock or other equity or voting interests of any Seller, or (D) split, combine, subdivide or reclassify any shares of the capital stock or other equity or voting interests of any Seller;

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

or other agreement to maintain any financial statement condition of another Person (collectively, “Indebtedness”);

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

v. enter into any commitment for, make or authorize capital expenditures in excess of \$25,000 for any individual commitment and \$100,000 for all commitments in the aggregate, including for property, plant and equipment, except for those, if any, that are expressly contemplated by the DIP Budget;

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

vii. other than as required by applicable Law, as contemplated by the DIP Budget or as set forth on Schedule 5.3(b)(vii) of the Disclosure Schedule, (1) grant to any current or former director, officer, employee, contractor or other service provider of any Seller any increase in compensation or benefits, (2) grant to any current or former director, officer, employee, contractor or other service provider of any Seller any severance, retention, change in control, termination or similar compensation or benefits, (3) grant or amend any equity, equity-based or other incentive or similar awards, (4) other than as required by any Contract or Employee Benefit Plan as in effect as of the Execution Date and made available to Buyer, pay any amount to any current or former director, officer, employee, contractor or other service provider of any Seller, (5) establish, adopt, enter into, materially amend or voluntarily terminate any Employee Benefit Plan or (6) take any action to accelerate or modify the vesting of, or payment of, any compensation or benefit, including under any Employee Benefit Plan;

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

ix. sell, lease, transfer, license, abandon, or otherwise dispose of, or grant any Lien (other than Permitted Liens), on any assets, other than sales of Inventory in the Ordinary Course of Business in exchange for fair value in cash or except to the extent permitted by the DIP Loan Documents;

x. waive, release, assign, institute, compromise, settle, or offer to do any of the foregoing, with respect to any pending or threatened Proceedings related

to any Seller, their respective businesses, the Purchased Assets or the Assumed Liabilities, other than (i) as required by order of the Bankruptcy Court or restricted pursuant to the Bankruptcy Code, the DIP Order or the DIP Loan Documents, as the case may be or (ii) involving solely money damages not in excess of \$75,000 individually, or \$150,000 in the aggregate (which damages, for further clarity, will constitute Excluded Liabilities);

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

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

xiii. fail to use commercially reasonable efforts to renew and maintain the validity of their respective rights in, to or under any material Intellectual Property;

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

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

xvi. (1) make, revoke or change any material Tax election or method of accounting with respect to Taxes, (2) file any Tax Return (other than in the Ordinary Course of Business and consistent with past practice and applicable Law) or amend any Tax Return, (3) enter into any closing agreement related to Taxes, or (4) enter

into any Tax allocation, sharing, indemnity or similar agreement or arrangement;  
and

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

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

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

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

**Section 5.6 Press Releases and Public Announcements.** After notice to and consultation with Buyer, after the Petition Date (but not before), Sellers shall be entitled to disclose, only to the extent required by applicable Law or by order of the Bankruptcy Court, this Agreement and all information provided by Buyer in connection herewith to the Bankruptcy Court,



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

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

**Section 5.8 Release of Claims.** Notwithstanding anything contained herein to the contrary (including any restriction contained in Section 5.3) not later than the Closing, the Sellers shall deliver to Buyer a full, irrevocable and unconditional release of any and all claims, actions, refunds, causes of action, choses in action, actions, suits or proceedings, rights of recovery, rights of setoff, rights of recoupment, rights of indemnity or contribution and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against Buyer and its respective current and former officers, directors, stockholders, employees, agents, representatives, attorneys, investors, parents, predecessors, subsidiaries, successors, assigns, and affiliates, each of the foregoing in their capacity as such (individually and collectively, the "Buyer Released Parties"), from all actions, causes of action, damages, claims, and demands whatsoever, in law or in equity, known or unknown, contingent or liquidated, whether direct claims or for indemnification or contribution, that the Sellers ever had, now has, or may have against the Buyer Released Parties in connection with any event, conduct or circumstance occurring prior to the Closing, except, in each case, with respect to (i) any rights of the Sellers under this Agreement, any of the Related Agreements, any of the DIP Loan Documents or any other agreement between the Parties entered after the Execution Date and (ii) fraud, gross negligence or willful misconduct of the Buyer Released Parties. The foregoing release shall be effective upon approval by a Final Order of the Bankruptcy Court.

**Section 5.9 Transition Services Agreement.** Upon the request by Buyer following the date of this Agreement and prior to the date that is five Business Days prior to the Closing Date, the Parties shall negotiate in good faith a customary transition services agreement by and between Sellers, on the one hand, and Buyer, on the other hand (the "Transition Services Agreement"), in

a form reasonably satisfactory to the Parties, pursuant to which the Parties shall provide reasonable assistance in transitioning the Purchased Assets from Sellers to Buyer for a period mutually agreed, with each of the Parties bearing their own respective costs in connection with such Transition Services Agreement (unless otherwise agreed in the Transition Services Agreement).

## **ARTICLE VI OTHER COVENANTS**

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

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

**Section 6.2 Further Assurances.** In case at any time from and after the Closing any further action is necessary or reasonably required to carry out the purposes of this Agreement, subject to the terms and conditions of this Agreement and the terms and conditions of the Sale Order, at any Party's request and sole cost and expense, each Party shall take such further action (including the execution and delivery to any other Party of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation and providing materials and information) as another Party may reasonably request as shall be necessary to transfer, convey and assign to Buyer all of the Purchased Assets, to confirm Buyer's assumption of the Assumed Liabilities and to confirm Sellers' retention of the Excluded Assets and Excluded Liabilities. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Sellers discovers any additional assets or properties which the Parties mutually agree should have been transferred or assigned to Buyer as Purchased Assets but were not so transferred or assigned, Buyer and Sellers shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Buyer.

**Section 6.3 Availability of Business Records.** From and after the Closing, Buyer shall provide to Sellers and their respective Representatives (after reasonable notice and during normal business hours and without charge to Sellers) reasonable access to all Records included in the Purchased Assets for periods prior to the Closing and reasonable access to Transferred Employees to the extent such access is necessary in order for Sellers (as applicable) to comply with applicable Law or any contract to which it is a party, for liquidation, winding up, Tax reporting or other proper purposes and so long as such access is subject to an obligation of confidentiality, and shall preserve such Records until the latest of (i) three years after the Closing Date, (ii) the required retention period for all government contact information, records or documents, (iii) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases or (iv) in the case of Records related to Taxes, the expiration of the statute of limitation applicable to such Taxes. Such access shall include access to any information in electronic form to the extent reasonably available.

**Section 6.4 Employee Matters.**

(a) Within 10 days prior to Closing (or on such other timeline as agreement by the Parties) Sellers will update the Employee Roster. At least five days prior to the Closing, Buyer will identify the employees (or corresponding positions) on the Employee Roster to whom Buyer intends make an offer of employment. Prior to Closing, Buyer shall offer employment to the employees listed on such schedule (an “Offeree”) to the extent such employee is an employee of a Seller and remains employed by such Seller immediately prior to the Closing on employment terms as Buyer may determine in its sole discretion.

(b) Each Offeree of Sellers who accept offers for employment with Buyer prior to the Closing shall be referred to herein as a “Transferred Employee.” Effective as of the Closing, each Transferred Employee shall cease to be an employee of any Seller or their Affiliates. Each Offeree of Sellers who is not a Transferred Employee shall be referred to herein as an “Excluded Employee.”

(c) Following the Execution Date:

i. Sellers will allow Buyer or any of its Representatives reasonable access upon reasonable advance notice to meet with and interview the individuals listed on the Employee Roster during normal business hours;

ii. Sellers shall not, nor shall any Seller authorize or direct or give express permission to any Affiliate, officer, director or employee of any Seller or any Affiliate, to (A) interfere with Buyer’s or its Representatives’ rights under Section 6.4(a) to make offers of employment to any Offeree, or (B) solicit or encourage any Offeree not to accept, or to reject, any such offer of employment;

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

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

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

(d) Nothing in this Section 6.4 shall be construed as requiring, and neither Sellers nor any of their Affiliates shall take any affirmative action that would have the effect of requiring Buyer to continue any specific employee benefit plan or to continue the

employment of any specific person. Nothing in this Agreement is intended to establish, create or amend, nor shall anything in this Agreement be construed as establishing, creating or amending, any employee benefit plan, practice or program of Buyer, any of its Affiliates or any of Sellers' Employee Benefit Plans, nor shall anything in this Agreement create or be construed as creating any contract of employment or as conferring upon any Current Employee, Transferred Employee or upon any other person, other than the Parties to this Agreement in accordance with its terms, any rights to enforce any provisions of this Agreement under ERISA or otherwise.

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

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

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

**Section 6.8 No Successor Liability.** The Parties intend that, to the fullest extent permitted by applicable Law (including under Section 363 of the Bankruptcy Code), upon the Closing, Buyer shall not be deemed to: (a) be the successor of any Seller, (b) have, *de facto* or otherwise, merged with or into any Seller, (c) be a mere continuation or substantial continuation of any Seller or the enterprise(s) of Sellers or (d) be liable or have any Liability for any acts or omissions of Sellers in the conduct of their businesses or arising under or related to the Purchased

Assets other than as expressly set forth and agreed in this Agreement. Without limiting the generality of the foregoing, and except as otherwise expressly provided in this Agreement, the Parties intend that Buyer shall have no Liability for any Lien (other than the Assumed Liabilities and Permitted Liens on the Purchased Assets) against Sellers or any of Sellers predecessors or Affiliates, and Buyer shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date or in connection with the transactions contemplated to occur on the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the businesses of Sellers, the Purchased Assets or any Liability of Sellers arising prior to, or relating to any period occurring prior to, the Closing Date. The Parties agree that the Sale Order shall contain provisions substantially in the form set forth in this Section 6.8.

**Section 6.9 Covenant Not to Compete; Non-Solicitation.**

(a) For a period commencing on the Closing Date and ending on the three-year anniversary of the Closing Date (the “Restricted Period”), each Seller shall not, directly or indirectly, establish, finance, own, manage, operate, engage in or otherwise participate in the conduct of any business that is the same or substantially similar to and directly or indirectly competes in any respect with the business of the Sellers as conducted in the 12 months prior to the Closing Date.

(b) During the Restricted Period, each Seller shall not (i) directly or indirectly solicit, encourage or attempt to solicit or encourage any of the employees, agents, independent contractors, consultants or representatives of Buyer to terminate his, her or its relationship with Buyer; (ii) directly or indirectly solicit, encourage or attempt to solicit or encourage any of the employees, agents, independent contractors, consultants or representatives of Buyer to become employees, agents, representatives, consultants or independent contractors of any other Person; (iii) directly or indirectly solicit or attempt to solicit any customer, vendor or distributor of Buyer with respect to any product or service being furnished, made, sold or leased by Buyer; or (iv) persuade or seek to persuade any customer of Buyer to cease to do business or to reduce the amount of business that such customer has customarily done prior to the Closing Date with the Sellers.

(c) The Parties expressly acknowledge that it would be difficult to measure the damages that might result from any breach of this Section 6.9, and that any such breach will result in immediate, substantial and irreparable injury to Buyer for which it will have no adequate remedy at law. Buyer shall be entitled to, without the posting of any bond, seek an injunction or other equitable relief issued by a court of competent jurisdiction enjoining and restraining any violation or threatened violation of this Section 6.9 by any Seller. Each Seller acknowledges and agrees that this Section 6.9 is (i) a material inducement for Buyer to enter into this Agreement and consummate the transactions contemplated hereby, and (ii) reasonable under the circumstances to protect the Purchased Assets and goodwill acquired by Buyer under this Agreement. Rights and remedies provided for in this Section 6.9 are cumulative and shall be in addition to rights and remedies otherwise available to the Parties hereunder or under any other agreement or applicable law.

(d) If any provision contained in this Section 6.9 is for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this Section 6.9, but this Section 6.9 will be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The Parties intend that if any of the restrictions or covenants contained herein is held to cover a geographic area or to be for a length of time which is not permitted by applicable law, or in any way construed to be too broad or to any extent invalid, such provision will not be construed to be null, void and of no effect, but to the extent such provision would be valid or enforceable under applicable law, a court of competent jurisdiction will construe and interpret or reform this Section 6.9 to provide for a covenant having the maximum enforceable geographic area, time period and other provisions (not greater than those contained herein) as will be valid and enforceable under such applicable law.

(e) It is expressly agreed by Buyer that in no event will the restrictions set forth in this Section 6.9 apply or be deemed or interpreted to apply to any other Person other than Seller itself.

## ARTICLE VII CONDITIONS TO CLOSING

### **Section 7.1 Conditions to Buyer's Obligations.**

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

(a) as of the Execution Date and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 3.1, Section 3.2 or Section 3.3 shall be true and correct in all respects other than *de minimis* exceptions, and (ii) each other representation or warranty set forth in Article III shall be true and correct in all respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, has not had, and would not reasonably be expected to have, a Material Adverse Effect; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to "materiality" and "Material Adverse Effect" contained in such representations and warranties shall be disregarded;

(b) Sellers shall have performed and complied with their covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Sellers shall have caused the documents and instruments required by Section 2.9(a) to be delivered to Buyer (or tendered subject only to Closing);

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

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

(e) (i) no Default or Event of Default (in each case as such term is defined in the DIP Loan Agreement) shall have occurred and be continuing under the DIP Loan Agreement arising from the appointment of an examiner with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code or a trustee or any of the Chapter 11 Cases being dismissed or converted to a case under Chapter 7 under the Bankruptcy Code; and (ii) no other Default or Event of Default shall have occurred and be continuing under the DIP Loan Agreement under circumstances where, on or prior to the date of such other Default or Event of Default, there shall have been Fraud or a Willful Breach committed by either Seller under or in respect of the DIP Loan Agreement;

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

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

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

(a) as of the Execution Date and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 4.1, Section 4.2 or Section 4.3 shall be true and correct in all respects other than *de minimis* exceptions, and (ii) each other representation or warranty set forth in Article IV shall be true and correct in all material respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, would not reasonably be expected to materially prevent, restrict or delay the consummation of the Contemplated Transactions or by any Related Agreement; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to "materiality" and "Material Adverse Effect" contained in such representations and warranties shall be disregarded;

(b) Buyer shall have performed and complied with its covenants and agreements hereunder to the extent required to be performed prior to the Closing in all

material respects, and Buyer shall have caused the documents, instruments and payments required by Section 2.9(b) to be delivered to Sellers (or tendered subject only to Closing);

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

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

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

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

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

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

## **ARTICLE VIII TERMINATION**

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

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

(b) by written notice of either Buyer or Sellers, if there shall be any Law that makes consummation of the Contemplated Transactions illegal or otherwise prohibited, or upon the issuance by any Governmental Entity of an Order restraining, enjoining, or



otherwise prohibiting the consummation of the Contemplated Transactions or declaring unlawful the Contemplated Transactions, and such Order having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Order was caused by the breach or action or inaction of such Party;

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

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

(e) by Buyer, if (i) the Sale Procedures Order shall not have been entered by the Bankruptcy Court on or before the Applicable Deadline, (ii) the Auction has not concluded on or before the 45th calendar day after the earliest Petition Date of Sellers, (iii) the Sale Order shall not have been entered by the Bankruptcy Court on or before the 55th calendar day after the earliest Petition Date of Sellers, (iv) at any time after entry of the Sale Procedures Order, such Sale Procedures Order (including, without limitation, the provisions therein relating to the bid protections) is reversed, stayed, vacated or otherwise modified by the Bankruptcy Court, or (v) at any time after entry of the Sale Order, such Sale Order is reversed, stayed, vacated or otherwise modified;

(f) by Buyer by giving written notice to Sellers at any time prior to Closing in the event Sellers have breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Sections 7.1(a) and 7.1(b) hereof, as the case may be, would not then be satisfied at the time of such breach, Buyer has notified Sellers of the breach, and the breach has continued without cure for the earlier of 10 days following the proposed Closing Date;

(g) by Sellers by giving written notice to Buyer at any time prior to Closing in the event Buyer has breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Sections 7.2(a) and 7.2(b) hereof, as the case may be, would not then be satisfied at the time of such breach, Sellers have notified Buyer of the breach, and the breach has continued without cure for the earlier of 10 days following the proposed Closing Date;

(h) by written notice from Sellers to Buyer, if all of the conditions set forth in Section 7.1 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and Buyer fails to complete the Closing at the time required by Section 2.8;

(i) by written notice from Buyer to Sellers upon (i) the occurrence of any Event of Default (as defined in the DIP Order or any DIP Loan Documents) arising from Fraud, Willful Breach by either of the Sellers, appointment of an examiner with expanded powers

pursuant to Section 1104(c) of the Bankruptcy Code or a trustee or any of the Chapter 11 Cases being dismissed or converted to a case under Chapter 7 under the Bankruptcy Code or (ii) the occurrence of any other Default or Event of Default under the DIP Loan Agreement if, on or prior to the date of such other Default or Event of Default, there shall have been Fraud or a Willful Breach committed by either Seller under or in respect of the DIP Loan Agreement;

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

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

i. approval by the Bankruptcy Court of an Alternate Transaction, unless Buyer has agreed to be a “back-up bidder” under the Sale Procedures Order; or

ii. the consummation of an Alternate Transaction.

Notwithstanding anything to the contrary contained herein, (i) in no event may Buyer terminate this Agreement under Section 8.1(f) on account of Buyer’s failure to satisfy the conditions contained in Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to any proposed Assumed Contract, and (ii) a Party shall not be permitted to terminate this Agreement pursuant to this Article VIII if the applicable Termination Event was caused by the breach of such Party or such Party’s gross negligence, willful misconduct, or bad faith or such Party is in material breach of any covenant, representation or warranty hereunder such that the conditions in Section 7.1(a)-(b) or Section 7.2(a)-(b), as applicable, would fail to be satisfied at the Closing.

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

**Section 8.3** [Reserved].

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

failure to act with the actual knowledge that the taking of the act or failure to act would result in a material breach of this Agreement or the DIP Loan Agreement, respectively.

## ARTICLE IX MISCELLANEOUS

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

**Section 9.2 Expenses.** Except as otherwise provided in this Agreement, the DIP Order, the DIP Loan Documents or a Related Agreement, Sellers and Buyer shall bear their own expenses, including attorneys' fees, incurred in connection with the negotiation and execution of this Agreement, the Related Agreements and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Contemplated Transactions.

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

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

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

of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

**Section 9.6 Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of all Parties; provided, however, that (i) Buyer shall be permitted to assign any of its rights hereunder to one or more of its Affiliates, as designated by Buyer in writing to Sellers; (ii) Buyer shall remain liable for all of its obligations under this Agreement after any such assignment; and (iii) Sellers shall be permitted to assign any of their rights hereunder pursuant to a confirmed plan under Chapter 11 of the Bankruptcy Code or pursuant to an order of the Bankruptcy Court.

**Section 9.7 Notices.** All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient; (ii) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (iii) when sent by email (with written confirmation of transmission); or (iv) three Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to any Sellers, then to:

Novan, Inc.  
4020 Stirrup Creek Drive, Suite 110  
Durham, North Carolina 27703  
Attention: Paula Brown Stafford; John M. Gay  
Email: jgay@novan.com

with a copy to:

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.  
150 Fayetteville Street, Suite 2300  
Raleigh, North Carolina 27609  
Attention: Gerald F. Roach;  
Christopher B. Capel;  
James R. Jolley  
Email: jolley@smithlaw.com

and

Morris, Nichols, Arsht & Tunnell LLP  
1201 N Market St # 1600, Wilmington, DE 19801  
Wilmington, DE 19801  
Attention: Derek Abbot  
Email: dabbot@morrisnichols.com

If to Buyer, then to:

Ligand Pharmaceuticals Incorporated  
3911 Sorrento Valley Boulevard, Suite 110  
San Diego, CA 92121  
Attention: Chief Financial Officer  
Email: mkorenberg@ligand.com

with copies (which shall not constitute notice) to:

Ligand Pharmaceuticals Incorporated  
3911 Sorrento Valley Boulevard, Suite 110  
San Diego, CA 92121  
Attention: General Counsel  
Email: areardon@ligand.com

and

Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178  
Attention: Craig Wolfe  
Email: craig.wolfe@morganlewis.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 9.21 Counterparts; Facsimile and Email Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docuSign.com](http://www.docuSign.com)) or other transmission method and any



counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

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

**SIGNATURE PAGE TO  
AMENDED AND RESTATED ASSET PURCHASE AGREEMENT**

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

**SELLERS:**

**NOVAN, INC.**

By DocuSigned by:  
Paula Brown Stafford  
A90B37C06B13486...  
Name: Paula Brown Stafford  
Title: President and CEO

**EPI HEALTH, LLC**

By DocuSigned by:  
Paula Brown Stafford  
A90B37C06B13486...  
Name: Paula Brown Stafford  
Title: CEO

**BUYER:**

**LIGAND PHARMACEUTICALS  
INCORPORATED**

By DocuSigned by:  
Matthew Korenberg  
3A4206E1E169402  
Name: Matthew Korenberg  
Title: President & COO

**Schedule 2.1(b)**

**Assumed Commercial Business Assets**

1. SITAVIG (acyclovir 50mg buccal tablets)

**Schedule 2.2(a)**

**Excluded Commercial Business Assets**

1. RHOFADE (oxymetazoline hydrochloride 1% cream)
2. MINOLIRA (biphasic minocycline hydrochloride immediate release/extended release 105 mg and 135 mg tablets)
3. CLODERM (clocortolone pivalate cream 0.1%)

**Schedule 2.6(a)****Assumed Contract List**

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

<b>ASSUMED CONTRACTS FOR DEVELOPMENT ASSETS</b>					
<b>ID#</b>	<b>Contract Counterparty</b>	<b>Debtor</b>	<b>Contract Title &amp; Description</b>	<b>Date of Contract</b>	<b>Estimated Cure Amount<sup>1</sup></b>
1	Actalent Services, LLC	Novan, Inc.	Actalent_SOW_QA Manager_FE_16Feb2023	2/16/2023	\$0.00
2	Actalent Services, LLC	Novan, Inc.	Actalent Scientific_Services Agreement_FE_11Oct2021	10/5/2021	\$0.00
3	Actalent Services, LLC	Novan, Inc.	Actalent_Exhibit A_Steven Jones_FE_14Apr2022	4/14/2022	\$0.00
4	Actalent Services, LLC	Novan, Inc.	Actalent Services_MSA_FE_17Nov2021	11/17/2021	\$81,560.00
5	Advanced Recruiting Partners, LLC	Novan, Inc.	Advanced Recruiting Partners_Fee Agreement_FE_7Mar2023	3/7/2023	\$0.00
6	Advanced Recruiting Partners, LLC	Novan, Inc.	Advanced Recruiting Partners_Rate Agreement_FE_22Mar2023	3/7/2023	\$10,133.31
7	Advanced Recruiting Partners, LLC	Novan, Inc.	Advanced Recruiting Partners_DH Agreement_FE_11Jun2021	6/11/2021	\$0.00
8	Advanced Recruiting Partners, LLC	Novan, Inc.	Advanced Recruiting Partners_SA_FE_18Feb2019	2/18/2019	\$0.00
9	Airgas USA, L.L.C.	Novan, Inc.	Airgas_AmI Reinstatement_Mutual NDA_FE_3Aug2021	8/3/2021	\$9,007.89
10	Airgas USA, L.L.C.	Novan, Inc.	Airgas_Rider_FE_3Mar2022	2/1/2022	\$0.00
11	Armstrong Relocation Co, Inc - Raleigh	Novan, Inc.	Armstrong Commercial Services_Proposal_FE_9Mar2021	2/8/2021	\$20,932.80
12	Barry Wehmiller Design Group	Novan, Inc.	Barry Wehmiller Design Group_SOW1_FE_15Feb2023	2/15/2023	\$0.00
13	Barry Wehmiller Design Group	Novan, Inc.	Barry Wehmiller Design_Mutual NDA_FE_19Oct2021	10/19/2021	\$66,560.00
14	Barry Wehmiller Design Group	Novan, Inc.	Barry Wehmiller Design Group_MSA_FE_15Feb2023	2/15/2023	\$0.00
15	Bayron Cleaning Services LLC	Novan, Inc.	Bayron Cleaning Services_SOW2_FE_25Aug2022	8/25/2022	\$0.00
16	Bayron Cleaning Services LLC	Novan, Inc.	Bayron Cleaning Services_MSA_FE_3Mar2022	2/17/2022	\$9,500.00
17	Bayron Cleaning Services LLC	Novan, Inc.	Bayron Cleaning Services_SOW 1_FE_11Apr2022	3/7/2022	\$0.00
18	Brady Trane Service, Inc.	Novan, Inc.	Brady Trane Service_Service Agreement_FE_3Mar2022	4/1/2022	\$17,820.10
19	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_QTE-9144450_Extractables Characterization of Aluminum Tube and Cap_FE_25SEP2019	9/18/2019	\$22,003.81
20	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_SOW 9208973_FE_30Aug2022	8/30/2022	\$0.00
21	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_QTE-9202127v2_FE_10Dec2021	11/24/2021	\$0.00

<sup>1</sup> Note: Estimated Cure Amounts are based on information available to the Debtors as of July 25, 2023, as amended, related to petition date balances owed and are subject to update, including updates that have been communicated to Buyer via reports due under the DIP Loan Agreement. The Estimated Cure Amounts have generally been provided in this chart on an aggregate basis across all contracts with a particular counterparty. For ease of reference, the aggregate amount has been set out in the "Estimated Cure Amount" column for one particular contract (even though the cure costs may be spread out across multiple contracts with the same counterparty).

ASSUMED CONTRACTS FOR DEVELOPMENT ASSETS					
ID#	Contract Counterparty	Debtor	Contract Title & Description	Date of Contract	Estimated Cure Amount <sup>1</sup>
22	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_Quotation 9145101_FE_7Sept2021	9/2/2021	\$0.00
23	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_SOW 9194167_FE_17May2022	5/3/2022	\$0.00
24	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_MSA_FE_8Apr2015 as amended	4/8/2015	\$0.00
25	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_QTE-9219576_FE_27Sept2022	9/27/2022	\$0.00
26	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_Quote_Microscopy_FE_23Sept2022	8/25/2022	\$0.00
27	Certara USA, Inc.	Novan, Inc.	Certara_WO1 Toxicology_FE_30May2023	5/30/2023	\$9,117.50
28	Certara USA, Inc.	Novan, Inc.	Certara_MSA_FE_25Apr2023	4/25/2023	\$0.00
29	Clarkston-Potomac Group, Inc.	Novan, Inc.	Clarkston_SOW 23-01_FE_30Mar2023	2/10/2023	\$0.00
30	Clarkston-Potomac Group, Inc.	Novan, Inc.	Clarkston_SOW 22-02_FE_18Oct2022	10/10/2022	\$0.00
31	Clarkston-Potomac Group, Inc.	Novan, Inc.	Clarkston Consulting_Mutual NDA_FE_9Mar2022	3/9/2022	\$410,050.00
32	Clarkston-Potomac Group, Inc.	Novan, Inc.	Clarkston Consulting_MSA_FE_14Apr2022	4/5/2022	\$0.00
33	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_CO SOW8_NI-MC301_FE_27Jun2019	6/27/2019	\$0.00
34	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_WO 19-531_AD201_FE_27Sept2019	9/27/2019	\$0.00
35	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_CO SOW9_NI-MC302_FE_27Jun2019	6/27/2019	\$0.00
36	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_SOW9_MC302_FE_28Mar2019	4/1/2019	\$0.00
37	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_Work Order 20-272_FE_6Jul2020	7/7/2020	\$0.00
38	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_WO 19-664_HF_FE_16Sep2019	9/13/2019	\$0.00
39	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_SOW8_MC301_FE_28Mar2019	4/1/2019	\$0.00
40	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_NI-MC101 WO 19-537_CO 1_FE_15Aug2019	8/14/2019	\$0.00
41	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_WO 19-537_MC101_FE_15Jul2019	7/9/2019	\$0.00
42	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_WO 22-126_FE_2Feb2022	2/2/2022	\$11,799.18
43	Commissioning Agents, Inc	Novan, Inc.	Commissioning Agents_SOW2_FE_6Feb2023	2/6/2023	\$0.00
44	Commissioning Agents, Inc	Novan, Inc.	CAI_SOW 1_FE_15Nov2021	11/15/2021	\$95,610.28
45	Commissioning Agents, Inc	Novan, Inc.	Commissioning Agents_Mutual NDA_FE_4Feb2021	2/4/2021	\$0.00
46	Commissioning Agents, Inc	Novan, Inc.	Commissioning Agents_MSA_FE_16Apr2021	4/12/2021	\$0.00
47	Copper II 2020, LLC	Novan, Inc.	Lincoln Harris_Lease Am2_FE_19Nov2021	1/18/2021	\$0.00
48	Copper II 2020, LLC	Novan, Inc.	Lincoln Harris_Lease Am1_FE_18Mar2021	3/18/2021	\$0.00
49	Copper II 2020, LLC	Novan, Inc.	Lincoln Harris_Lease_FE_18Jan2021	1/18/2021	\$0.00
50	Copper II 2020, LLC	Novan, Inc.	Lincoln Harris_Estoppel_FE_1Dec2021	12/1/2021	\$0.00

ASSUMED CONTRACTS FOR DEVELOPMENT ASSETS					
ID#	Contract Counterparty	Debtor	Contract Title & Description	Date of Contract	Estimated Cure Amount <sup>1</sup>
51	Copper II 2020, LLC	Novan, Inc.	Lincoln Harris_EstoppeL_FE_11Oct2022	10/11/2022	\$0.00
52	Doe & Ingalls	Novan, Inc.	Doe & Ingalls_Stocking Agreement_FE_26May2022	5/26/2022	\$119,283.69
53	Doe & Ingalls	Novan, Inc.	Doe and Ingalls_WSA_PE_12Aug2021	8/6/2021	\$0.00
54	EPL Archives	Novan, Inc.	EPL_MSA_FE_20Jul2015	7/13/2015	\$1,649.00
55	Evergreen Healthcare Consulting LLC	Novan, Inc.	Evergreen Consulting, LLC Statement of Work #1	1/12/2023	\$1,950.00
56	Evergreen Healthcare Consulting LLC	Novan, Inc.	Evergreen HealthCare MSA	1/11/2023	\$0.00
57	Industrial Automated Systems, Inc.	Novan, Inc.	Industrial Automated Systems_Quote 22085_FE_12May2022	5/12/2022	\$0.00
58	Industrial Automated Systems, Inc.	Novan, Inc.	Industrial Automated Systems_MSA_FE_11Feb2022	2/11/2022	\$10,433.60
59	KIPAX AB	Novan, Inc.	Kipax_Patent_Purchase_Agreement_FE_27July15	7/27/2015	\$0.00
60	KIPAX AB	Novan, Inc.	First_Am_Novan_Kipax_Patent_FE_13Oct17	10/17/2013	\$0.00
61	KNOW Bio, LLC	Novan, Inc.	UNC Sublicense Agreement, dated December 29, 2015, by and between Novan, Inc. and KNOW Bio,	12/29/2015	\$0.00
62	KNOW Bio, LLC	Novan, Inc.	Novan Patent and Know-How License Agreement, dated December 29, 2015, by and between Novan,	12/29/2015	\$0.00
63	Level 3 Communications	Novan, Inc.	CenturyLink-Lumen_Service Order_FE_23Feb2021	2/23/2021	\$1,417.40
64	MasterControl	Novan, Inc.	Mastercontrol_Quote_FE_10Feb2023	2/10/2023	\$0.00
65	MasterControl	Novan, Inc.	Mastercontrol_Quote_FE_4May2023	6/1/2023	\$17,200.00
66	Mobile Mini	Novan, Inc.	Mobile Mini_Rental Agreement_40' Container_27Apr2021	5/4/2021	\$435.68
67	National Institute of Allergy and Infectious Diseases	Novan, Inc.	NIH Grant titled Development of a nitric oxide-releasing antiviral gel for the treatment of cervical HPV infections and prevention of downstream malignancies in women	8/12/2023	\$0.00
68	NDA Regulatory Development, Inc.	Novan, Inc.	NDA Group_WO1_FE_5May2021	5/4/2021	\$0.00
69	NDA Regulatory Development, Inc.	Novan, Inc.	NDA Group_WO3_FE_24May2023	5/24/2023	\$0.00
70	NDA Regulatory Development, Inc.	Novan, Inc.	NDA Group_MSA_FE_5May2021	5/5/2021	\$0.00
71	NDA Regulatory Development, Inc.	Novan, Inc.	NDA Group_WO2_FE_20Aug2021	8/17/2021	\$0.00
72	Orion Corporation	Novan, Inc.	Orion_SOW11_FE_11Nov2021	11/11/2021	\$0.00
73	Orion Corporation	Novan, Inc.	Orion_SOW 10_FE_15Mar2022	3/7/2022	\$0.00
74	Orion Corporation	Novan, Inc.	Orion_SOW12_FE_31May2022	5/27/2022	\$0.00
75	Orion Corporation	Novan, Inc.	Orion_SOW1 TTA_FE_8Jan2019	1/8/2019	\$0.00
76	Orion Corporation	Novan, Inc.	Orion_SOW3 Am1_16Dec2019	12/12/2019	\$0.00

ASSUMED CONTRACTS FOR DEVELOPMENT ASSETS					
ID#	Contract Counterparty	Debtor	Contract Title & Description	Date of Contract	Estimated Cure Amount <sup>1</sup>
77	Orion Corporation	Novan, Inc.	Orion_SOW7_FE_22Mar2021	3/22/2021	\$0.00
78	Orion Corporation	Novan, Inc.	Orion_SOW15_FE	2/22/2023	\$0.00
79	Orion Corporation	Novan, Inc.	Orion_SOW16_FE_17May2023	5/17/2023	\$0.00
80	Orion Corporation	Novan, Inc.	Orion_SOW 3_FE_12Jul2019	6/10/2019	\$0.00
81	Orion Corporation	Novan, Inc.	Orion_MCMA_FE_15Oct2018	10/15/2018	\$0.00
82	Orion Corporation	Novan, Inc.	Orion_Quality Agreement Updated Oct 2019_FE_16Oct2019	8/16/2019	\$146,792.81
83	Orion Corporation	Novan, Inc.	Orion_Quinta_NDA 3-way_FE_6Feb2019	2/1/2019	\$0.00
84	Orion Corporation	Novan, Inc.	Orion_SOW 8_FE_23Jun2021	6/22/2021	\$0.00
85	Orion Corporation	Novan, Inc.	Orion_SOW9 Am1_FE_10Feb2022	2/4/2022	\$0.00
86	Orion Corporation	Novan, Inc.	Orion_Visitor NDA_FE_7Dec2021	12/7/2021	\$0.00
87	Orion Corporation	Novan, Inc.	Orion_SOW14_FE_16Sept2022	9/16/2022	\$0.00
88	Orion Corporation	Novan, Inc.	Orion_SOW13_FE_14Jun2022	6/14/2022	\$0.00
89	Orion Corporation	Novan, Inc.	Orion_Quality Agreement_FE_1Jun2022	5/31/2022	\$0.00
90	Orion Corporation	Novan, Inc.	Orion_Mutual NDA_Cilatus audit_FE_7Apr2022	4/7/2022	\$0.00
91	Orion Corporation	Novan, Inc.	Orion_SOW 10 Am1_FE_4Apr2022	4/4/2022	\$0.00
92	Orion Corporation	Novan, Inc.	Orion_SOW9_FE_4Oct2021	9/27/2021	\$0.00
93	Orion Corporation	Novan, Inc.	Orion_SOW5_FE_6Nov2020	11/6/2020	\$0.00
94	PCI	Novan, Inc.	PCI_SOW CPR23103_00_FE_22Feb2023	2/7/2023	\$0.00
95	PCI	Novan, Inc.	PCI_SOW CPR22334_FE_16May2022	5/16/2022	\$0.00
96	PCI	Novan, Inc.	PCI_CPR21173_00_FE_2Mar2021	2/23/2021	\$0.00
97	PCI	Novan, Inc.	PCI_CPR21096_01_FE_2Mar2021	3/2/2021	\$0.00
98	PCI	Novan, Inc.	PCI_MSA Am3_FE_5Oct2022	8/12/2021	\$38,078.84
99	PCI	Novan, Inc.	PCI_SOW CPR21256_02_FE_2Jun2021	5/27/2021	\$0.00
100	Precision Stability Storage, L.L.C.	Novan, Inc.	Precision Stability Storage_MSA_FE_17Aug2022	8/17/2022	\$12,258.00
101	Precision Stability Storage, L.L.C.	Novan, Inc.	Precision Stability Storage_Quality Agreement_FE_30Aug2022	8/30/2022	\$0.00
102	Quality Resource Solutions, LLC	Novan, Inc.	Quality Resource Solutions_SOW_GLP Audits_FE_23Sept2019	8/9/2019	\$0.00
103	Quality Resource Solutions, LLC	Novan, Inc.	Quality Resources_SOW MC Site Audit_FE_5Jun2019	5/23/2019	\$0.00
104	[Reedy Creek Investments LLC]	Novan, Inc.	[Reedy Creek_Royalty and Milestone Purchase Agreement_FE_30Apr2019]	4/29/2019	\$0.00



ASSUMED CONTRACTS FOR DEVELOPMENT ASSETS					
ID#	Contract Counterparty	Debtor	Contract Title & Description	Date of Contract	Estimated Cure Amount <sup>1</sup>
105	[Reedy Creek Investments LLC]	Novan, Inc.	[Reedy Creek_Mutual NDA_FE_13Jul2023]	7/13/2023	\$0.00
106	Research Triangle Institute	Novan, Inc.	RTI_SOW10_FE_15Oct2019	10/3/2019	\$18,148.20
107	Research Triangle Institute	Novan, Inc.	RTI International_SOW Method Dev 3_FE_16May2023	5/16/2023	\$0.00
108	Research Triangle Institute	Novan, Inc.	RTI_SOW9_FE_26Jun2019	6/18/2019	\$0.00
109	Research Triangle Institute	Novan, Inc.	RTI_MC304 Consulting Agreement_08May2020	5/8/2020	\$0.00
110	Research Triangle Institute	Novan, Inc.	RTI_SOW Am1_FE_4Sept2020	9/22/2020	\$0.00
111	Research Triangle Institute	Novan, Inc.	RTI_MSA_03May2020	5/3/2020	\$0.00
112	Research Triangle Institute	Novan, Inc.	RTI_SOW NDMA Method_FE_30Nov2022	11/30/2022	\$0.00
113	Research Triangle Institute	Novan, Inc.	RTI_SOW Method Dev 2_FE_16Feb2023	2/16/2023	\$0.00
114	SAP America, Inc.	Novan, Inc.	SAP_Service Agreement_FE_30Dec2022	12/29/2022	\$184,677.02
115	Sato Pharmaceutical Co. Ltd.	Novan, Inc.	Sato-Novan License Agreement_FE_12Jan2017	1/12/2017	\$22,000.00
116	Sato Pharmaceutical Co. Ltd.	Novan, Inc.	Sato-Novan Am to License Agreement_FE_12Jan2017	1/13/2017	\$0.00
117	Sato Pharmaceutical Co. Ltd.	Novan, Inc.	Sato-Novan Am2 to License Agreement_FE_5Oct2018	10/5/2018	\$0.00
118	Sato Pharmaceutical Co. Ltd.	Novan, Inc.	Sato_Clinical Supply Agreement_SKN15B01_10Mar2023	3/10/2023	\$0.00
119	Sato Pharmaceutical Co. Ltd.	Novan, Inc.	Sato Data Transfer Agreement_FE_10Mar2023	2/23/2023	\$0.00
120	Sato Pharmaceutical Co. Ltd.	Novan, Inc.	Sato_Novan PV Agreement_FE_29Jun2018	5/31/2018	\$0.00
121	Sato Pharmaceutical Co. Ltd.	Novan, Inc.	Sato Quality Agreement_FE_30Jul2018	7/11/2018	\$0.00
122	Sonitrol Integrated Security	Novan, Inc.	Sonitrol_Security System Agreement_FE_26Feb2021	2/26/2021	\$0.00
123	Sonitrol Integrated Security	Novan, Inc.	Sonitrol_WO_FE_13May2021	5/13/2021	\$0.00
124	Syneract, Inc.	Novan, Inc.	Syneract_SOW ISS/ISE_FE_22Oct2021	10/22/2021	\$0.00
125	Syneract, Inc.	Novan, Inc.	Syneract_WO_MC304_FE_11Aug2020	5/15/2020	\$13,375.48
126	Syneract, Inc.	Novan, Inc.	Syneract_MCRO Am1_FE_10Feb2021	2/10/2021	\$0.00
127	TBC Stirrup Creek JV LLC	Novan, Inc.	AMENITIES CENTER LICENSE AGREEMENT	12/22/2022	\$0.00
128	Technical Safety Services, LLC	Novan, Inc.	TSS_SOW2_FE_1May2023	1/1/2023	\$0.00
129	Technical Safety Services, LLC	Novan, Inc.	TSS_SOW4_PE_7Jul2023	7/6/2023	\$0.00
130	Technical Safety Services, LLC	Novan, Inc.	Technical Safety Services_MSA_FE_27Oct2021	10/27/2021	\$39,920.00
131	Technical Safety Services, LLC	Novan, Inc.	TSS_SOW3_FE_1Jan2023	5/2/2023	\$0.00
132	Tergus Pharma	Novan, Inc.	Tergus_WO17_FE_9Mar2022	3/8/2022	\$0.00
133	Tergus Pharma	Novan, Inc.	Tergus_WO7_FE_4Dec2020	12/4/2020	\$0.00

ASSUMED CONTRACTS FOR DEVELOPMENT ASSETS					
ID#	Contract Counterparty	Debtor	Contract Title & Description	Date of Contract	Estimated Cure Amount <sup>1</sup>
134	Tergus Pharma	Novan, Inc.	Tergus Pharma_WO 2_FE_7Jul2020	6/30/2020	\$0.00
135	Tergus Pharma	Novan, Inc.	Tergus Pharma_Quality Agreement_FE_25Oct2022	10/21/2022	\$0.00
136	Tergus Pharma	Novan, Inc.	Tergus Pharma_WO15_FE_25Jun2021	6/25/2021	\$0.00
137	Tergus Pharma	Novan, Inc.	Tergus Pharma_MSA Am2_FE_10Nov2021	11/1/2021	\$95,100.54
138	Tergus Pharma	Novan, Inc.	Tergus Pharma_WO11_FE_24Feb2021	2/24/2023	\$0.00
139	Tergus Pharma	Novan, Inc.	Tergus_MC304 Stability Testing Work Order_08May2020	5/8/2020	\$0.00
140	The University of Akron Research Foundation	Novan, Inc.	Akron_License Agreement_FE_23May2012	5/23/2012	\$0.00
141	The University of Alabama at Birmingham	Novan, Inc.	UAB_LOI_CDMRP Grant_FE_19Mar2019	3/18/2019	\$0.00
142	The University of Alabama at Birmingham	Novan, Inc.	UAB_Subaward_NIH Grant	03/19/2023	\$0.00
143	Therapeutics, Inc.	Novan, Inc.	Therapeutics Inc_SOW4_FE_15Mar2022	3/8/2022	\$0.00
144	Therapeutics, Inc.	Novan, Inc.	Therapeutics Inc_SOW5_FE_	3/24/2023	\$0.00
145	Therapeutics, Inc.	Novan, Inc.	Therapeutics Inc._SOW1_FE_11Aug2020	6/15/2020	\$9,949.50
146	TimelyText, Inc.	Novan, Inc.	TimelyText_MSA_FE_16Feb2023	2/16/2023	\$1,800.00
147	Two Labs Holdings, LLC	Novan, Inc.	Two Labs_SOW2_FE_10Dec2021	12/10/2021	\$0.00
148	Two Labs Holdings, LLC	Novan, Inc.	Two Labs_SOW1_FE_10Dec2021	12/10/2021	\$0.00
149	Two Labs Holdings, LLC	Novan, Inc.	Two Labs Holdings_Mutual NDA_FE_4Oct2021	10/4/2021	\$10,000.00
150	Two Labs Holdings, LLC	Novan, Inc.	Two Labs Holdings_MSA_FE_19Nov2021	11/19/2021	\$0.00
151	UNC Chapel Hill	Novan, Inc.	UNC-CH_Koch Sponsored Research_FE as amended	3/8/2018	\$50,063.47
152	University of North Carolina	Novan, Inc.	Amended, Restated and Consolidated License Agreement between The University of North Carolina	6/27/2012	\$0.00
153	USA Med Research ACQ Activity	Novan, Inc.	CDMRP Grant Agreement Log# CA180741	9/20/2019	\$0.00
154	Verta Life Sciences LLC	Novan, Inc.	Verta Life Sciences_SOW4_FE_10Jan2023	1/10/2023	\$0.00
155	Verta Life Sciences LLC	Novan, Inc.	Verta Life Sciences_Mutual NDA_FE_22Sept2021	9/22/2021	\$27,300.00
156	Verta Life Sciences LLC	Novan, Inc.	Verta Life Sciences_SOW2_FE_29Aug2022	8/29/2022	\$0.00
157	Verta Life Sciences LLC	Novan, Inc.	Verta Life Sciences_MSA_FE_4Apr2022	4/1/2022	\$0.00

<b>Assumed Contracts for Commercial Business Assets</b>					
<b>ID#</b>	<b>Contract Counterparty</b>	<b>Debtor</b>	<b>Contract Title &amp; Description</b>	<b>Date of Contract</b>	<b>Estimated Cure Amount</b>
<b>158</b>	Bayer Healthcare LLC	EPI Health, LLC	OTC Switch License Agreement between EPI Health, LLC and Bayer Healthcare LLC	2/21/2020	\$0.00
<b>159</b>	BioAlliance Pharma, S.A. & Innocutis Holdings, LLC	EPI Health, LLC	Supply Agreement by and between BioAlliance Pharma SA (later Onxeo then Vectans) and Innocutis Holdings, LLC (later Cipher then EPI Health)	3/17/2014	\$0.00
<b>160</b>	Vectans Pharma	EPI Health, LLC	Transfer and License Agreement between Vectans Pharma and EPI Health LLC	2/21/2020	\$10,613.75
<b>161</b>	Vectans Pharma	EPI Health, LLC	Quality Agreement- Sitavig US Market between EPI Health, LLC and Vectans Pharma	8/30/2018	\$0.00

**EXHIBIT A**

**Form of Bill of Sale and Assignment and Assumption Agreement**

*See attached.*

**FORM OF BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT**

This BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of [•], 2023 (this “Agreement”), by and among Novan, Inc., a Delaware corporation (“Novan”), EPI Health, LLC a South Carolina limited liability company and wholly-owned subsidiary of Novan (collectively with Novan, “Sellers”) and Ligand Pharmaceuticals Incorporated, a Delaware corporation (“Buyer”).

**WITNESSETH**

**WHEREAS**, Buyer and Sellers have entered into an Amended and Restated Asset Purchase Agreement dated as of September 1, 2023 (the “Purchase Agreement”);

**WHEREAS**, capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Purchase Agreement;

**WHEREAS**, pursuant to the Purchase Agreement, Sellers have agreed to sell, assign, convey, transfer and deliver the Purchased Assets to Buyer and Buyer has agreed to purchase and acquire the Purchased Assets upon the terms and subject to the conditions of the Purchase Agreement;

**WHEREAS**, pursuant to the Purchase Agreement, Buyer has agreed to assume from Sellers the Assumed Liabilities upon the terms and subject to the conditions of the Purchase Agreement;

**WHEREAS**, the parties desire to carry out the intent and purpose of the Purchase Agreement by Sellers’ execution and delivery to Buyer of this instrument evidencing the vesting in Buyer of certain Purchased Assets, subject to the provisions of the Purchase Agreement; and

**WHEREAS**, Sellers shall execute and deliver as of the date hereof (i) the Patent Assignment by and between Sellers and Buyer, (ii) the Trademark Assignment by and between Sellers and Buyer, and (iii) the Lease Assignment between Sellers and Buyer (collectively, the “Other Transfer Documents”).

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. As of the date hereof, Sellers, pursuant to the Purchase Agreement and on the same terms and conditions as stated therein, hereby convey, grant, sell, transfer, assign, and confirm unto Buyer and its respective successors and permitted assigns forever all of Sellers’ right, title and interest, as of the date hereof, in and to the Purchased Assets (other than those Purchased Assets sold, conveyed, transferred, assigned and delivered pursuant to the Other Transfer Documents) (the “Bill of Sale Purchased Assets”), free and clear of all Liens (other than Permitted Liens), subject to the provisions of the Purchase Agreement.

Section 2. Sellers hereby irrevocably designate, make, constitute and appoint Buyer, its successors and assigns, as Sellers' true and lawful attorney (and agent-in-fact), with full power of substitution, in Sellers' name and stead, on behalf of and for the benefit of Buyer, its successors and assigns, to, among other things,: (a) demand and receive any and all of the Bill of Sale Purchased Assets and to give receipts and releases for and in respect of the Bill of Sale Purchased Assets, or any part thereof, (b) from time to time institute and prosecute in Sellers' name, at the sole expense and for the benefit of Buyer, its successors and assigns, any and all proceedings at law, in equity or otherwise, which Buyer, its successors and assigns, may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to any item of the Bill of Sale Purchased Assets, to defend or compromise any and all actions, suits or proceedings in respect of any item of the Bill of Sale Purchased Assets, and to do all such acts and things in relation thereto as Buyer shall deem advisable, including, without limitation, for the collection or reduction to possession of any of the Bill of Sale Purchased Assets, (c) endorse Sellers' name on any payment, instrument, notice, or other similar document or agreement relating to the Bill of Sale Purchased Assets for the period commencing with the date hereof that may come in to the possession of Buyer or under Buyer control with respect to the Bill of Sale Purchased Assets and (d) to collect the moneys which become due and payable at any time on or after the date hereof under every Bill of Sale Purchased Asset. Sellers acknowledge that the foregoing powers are coupled with an interest and shall be irrevocable by Sellers.

Section 3. As of the date hereof, Buyer, pursuant to, in the manner and to the extent set forth in Section 2.3 of the Purchase Agreement, hereby assumes and shall hereafter pay, perform and discharge when due the Assumed Liabilities, subject to the provisions of the Purchase Agreement and on the same terms and conditions as stated therein. For the avoidance of doubt, other than Assumed Liabilities, Buyer will not and does not assume any Liability of any nature or kind whatsoever of Sellers.

Section 4. This Agreement (including the schedules and exhibits hereto and other documents specifically referred to herein), together with the Purchase Agreement and the Related Agreements (including the Other Transfer Documents), constitute the entire agreement among the parties and supersede any prior understandings, agreements or representations (whether written or oral) by or among the parties, written or oral, with respect to the subject matter hereof.

Section 5. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement.

Section 6. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. None of the parties may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of all parties; provided, however, that (i) Buyer shall be permitted to assign any of its rights hereunder to one or more of its affiliates, as designated by Buyer in writing to Sellers; (ii) Buyer shall remain liable for all of its obligations under this Agreement after any such assignment; and (iii) Sellers shall be permitted to assign any of their rights hereunder pursuant

to a confirmed plan under Chapter 11 of the Bankruptcy Code or pursuant to an order of the Bankruptcy Court.

Section 7. This Agreement shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the parties shall be determined in accordance with such Laws. The parties agree that any Proceeding one party commences against any other party pursuant to this Agreement shall be brought exclusively in the Bankruptcy Court and each of the parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such Proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in the Bankruptcy Court or that any such Proceeding which is brought in the Bankruptcy Court has been brought in an inconvenient forum; provided that if the Bankruptcy Court is unwilling or unable to hear any such Proceeding, then the courts of the State of Delaware, sitting in New Castle County, Delaware, and the federal courts of the United States of America sitting in New Castle County, Delaware, shall have exclusive jurisdiction over such Proceeding.

Section 8. Each of the parties hereby consents to process being served by any party, respectively, in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.7 of the Purchase Agreement.

Section 9. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

Section 10. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to any party. If any provision of this Agreement, or the application thereof to any person or any circumstance, is invalid or unenforceable, (a) the parties shall negotiate in good faith to find a suitable and equitable provision that shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability in any one jurisdiction affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 11. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, *e.g.*,

www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

*[Signature Page Follows]*



*Final Form*

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed by the signature of its duly authorized officer as of the date above first written.

**BUYER:**

**LIGAND PHARMACEUTICALS  
INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

**SELLERS:**

**NOVAN, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**EPI HEALTH, LLC**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Bill of Sale, Assumption and Assignment Agreement]*

**EXHIBIT B**

**Form of Lease Assignment**

*See attached.*

**FORM OF LEASE ASSIGNMENT<sup>1</sup>**

THIS LEASE ASSIGNMENT dated as of [•], 2023 (this “Assignment”), by and among Novan, Inc., a Delaware corporation (“Novan”), EPI Health, LLC a South Carolina limited liability company and wholly-owned subsidiary of Novan (collectively with Novan, “Assignors”) and Ligand Pharmaceuticals Incorporated, a Delaware corporation (“Assignee”).

**WITNESSETH**

**WHEREAS**, Assignors and Assignee have entered into an Amended and Restated Asset Purchase Agreement dated as of September 1, 2023 (the “Purchase Agreement”);

**WHEREAS**, capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Purchase Agreement;

**WHEREAS**, Assignors is the owners and holders of the tenant’s interest in and to those certain lease agreements, as affected by all amendments, modifications and supplements thereto, as described on Exhibit A attached hereto (each a “Lease” and collectively, the “Leases”) for certain premises described on Exhibit B attached hereto;

**WHEREAS**, pursuant to the Purchase Agreement Assignors have agreed to assign, transfer, convey and deliver to Assignee all of Assignors’ right, title and interest in and to the Leases and related leasehold improvements and fixtures (the “Leasehold Improvements”) located at the premises demised by each of the Leases;

**WHEREAS**, subject to the terms of this Assignment, Assignors desire to assign, transfer, convey and deliver all of its right, title and interest in the Leases and Leasehold Improvements to Assignee, and Assignee desires to purchase and accept such assignment and assume all rights, duties and obligations of the Assignors under the Leases and Leasehold Improvements arising on and after the date hereof.

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Assignors do hereby assign, transfer, convey and deliver unto Assignee, all of the Assignors’ right, title and interest in and to the Leases and the leasehold estates created thereby, together with all of Assignors’ right, title and interest in and to the premises demised under each of the Leases, and together with all of the appurtenant rights and easements thereby demised, and all of Assignors’ right, title and interest in and to the Leasehold Improvements located at such premises, and Assignee hereby accepts such assignment, transfer and conveyance and agrees to assume, perform and discharge all obligations and liabilities of Assignors under and related to the Leases and the Leasehold

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<sup>1</sup> The Parties agree to modify this document as necessary in the event any leases are required to be assigned separately or any such assignments are required to be recorded in the public land records.

Improvements which arise on or after the date hereof and relate to the period on or after the date hereof.

Section 2. This Assignment (including the schedules and exhibits hereto and other documents specifically referred to herein), together with the Purchase Agreement and the Related Agreements, constitute the entire agreement among the parties and supersede any prior understandings, agreements or representations (whether written or oral) by or among the parties, written or oral, with respect to the subject matter hereof.

Section 3. No amendment of any provision of this Assignment shall be valid unless the same shall be in writing and signed by each party except as expressly provided herein. No waiver of any breach of this Assignment shall be construed as an implied amendment or agreement to amend or modify any provision of this Assignment.

Section 4. This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. None of the parties may assign either this Assignment or any of its rights, interests or obligations hereunder without the prior written approval of all parties; provided, however, that (i) Assignee shall be permitted to assign any of its rights hereunder to one or more of its affiliates, as designated by Assignee in writing to Assignors; (ii) Assignee shall remain liable for all of its obligations under this Assignment after any such assignment; and (iii) Assignors shall be permitted to assign any of their rights hereunder pursuant to a confirmed plan under Chapter 11 of the Bankruptcy Code or pursuant to an order of the Bankruptcy Court.

Section 5. This Assignment shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the parties shall be determined in accordance with such Laws. The parties agree that any Proceeding one party commences against any other party pursuant to this Assignment shall be brought exclusively in the Bankruptcy Court and each of the parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such Proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such Proceeding in the Bankruptcy Court or that any such Proceeding which is brought in the Bankruptcy Court has been brought in an inconvenient forum; provided that if the Bankruptcy Court is unwilling or unable to hear any such Proceeding, then the courts of the State of Delaware, sitting in New Castle County, Delaware, and the federal courts of the United States of America sitting in New Castle County, Delaware, shall have exclusive jurisdiction over such Proceeding.

Section 6. Each of the parties hereby consents to process being served by any party, respectively, in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.7 of the Purchase Agreement.

Section 7. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS ASSIGNMENT.

Section 8. The provisions of this Assignment shall be deemed severable, and the invalidity or unenforceability of any provision of this Assignment shall not affect the validity or enforceability of any other provisions of this Assignment so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to any party. If any provision of this Assignment, or the application thereof to any person or any circumstance, is invalid or unenforceable, (a) the parties shall negotiate in good faith to find a suitable and equitable provision that shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Assignment and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability in any one jurisdiction affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 9. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

\* \* \* \* \*

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned has caused this Assignment to be executed by the signature of its duly authorized officer as of the date above first written.

**ASSIGNEE:**

**LIGAND PHARMACEUTICALS,  
INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNORS:**

**NOVAN, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**EPI HEALTH, LLC**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Lease Assignment]*

EXHIBIT A

**Description of Lease Documents**

**[TO BE INSERTED]**

EXHIBIT B

**Legal Description**

**(See Attached)**

**[TO BE INSERTED]**



**EXHIBIT C**

**Form of Patent Assignment**

*See attached.*

**FORM OF PATENT ASSIGNMENT**

This PATENT ASSIGNMENT (this “Assignment”), dated as of [•], 2023, by and among Novan, Inc., a Delaware corporation (“Novan”), EPI Health, LLC, a South Carolina limited liability company and wholly-owned subsidiary of Novan (collectively with Novan, “Assignors”) and Ligand Pharmaceuticals Incorporated, a Delaware corporation (“Assignee”).

**WHEREAS**, Assignors and Assignee have entered into an Amended and Restated Asset Purchase Agreement dated as of September 1, 2023, (the “Purchase Agreement”);

**WHEREAS**, capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Purchase Agreement;

**WHEREAS**, pursuant to the Purchase Agreement, Assignors have agreed to sell, assign, convey, transfer and deliver the Purchased Assets to Assignee, and Assignee has agreed to purchase and acquire the Purchased Assets upon the terms and subject to the conditions of the Purchase Agreement; and

**WHEREAS**, in accordance with the above and pursuant to the Purchase Agreement, Assignors wish to sell, transfer, assign, convey and deliver to Assignee, and Assignee wishes to purchase and acquire from Assignors, all of Assignors’ right, title and interest in, to or under the patent applications set forth on Schedule A attached hereto (collectively, the “Patents”).

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignors hereby sell, transfer, assign, convey and deliver to Assignee, its successors, assigns, and legal representatives their entire right, title and interest in and to the Patents, for the United States and for all foreign countries, including, without limitation, any issued patents and applications therefor, any inventions disclosed and claimed therein, all reissues, divisions, continuations, continuations-in-part, or extensions of the Patents, and all other corresponding rights that are or may be secured under the laws of the United States or any foreign country, now or hereafter in effect, for Assignee’s own use and enjoyment, and for the use and enjoyment of Assignee’s successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Assignors if this Assignment had not been made, together with all income, royalties, damages, claims, and payments with respect thereto due or payable as of the Closing Date or thereafter, and in and to all causes of action, including, without limitation, all causes of action (either in law or equity) and claims for damages by reason of past, present or future infringement, dilution or other unauthorized use of the Patents, with the right to sue for, and collect the same for Assignee’s own use and enjoyment and for the use and enjoyment of its successors, assigns or other legal representatives. In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. This Assignment (including the schedules and exhibits hereto and other documents specifically referred to herein), together with the Purchase Agreement and the

Related Agreements constitute the entire agreement among the parties and supersede any prior understandings, agreements or representations (whether written or oral) by or among the parties, written or oral, with respect to the subject matter hereof.

Section 2. No amendment of any provision of this Assignment shall be valid unless the same shall be in writing and signed by each party except as expressly provided herein. No waiver of any breach of this Assignment shall be construed as an implied amendment or agreement to amend or modify any provision of this Assignment.

Section 3. This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. None of the parties may assign either this Assignment or any of its rights, interests or obligations hereunder without the prior written approval of all parties; provided, however, that (i) Assignee shall be permitted to assign any of its rights hereunder to one or more of its affiliates, as designated by Assignee in writing to Assignors; (ii) Assignee shall remain liable for all of its obligations under this Assignment after any such assignment; and (iii) Assignors shall be permitted to assign any of their rights hereunder pursuant to a confirmed plan under Chapter 11 of the Bankruptcy Code or pursuant to an order of the Bankruptcy Court.

Section 4. This Assignment shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the parties shall be determined in accordance with such Laws. The parties agree that any Proceeding one party commences against any other party pursuant to this Assignment shall be brought exclusively in the Bankruptcy Court and each of the parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such Proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such Proceeding in the Bankruptcy Court or that any such Proceeding which is brought in the Bankruptcy Court has been brought in an inconvenient forum; provided that if the Bankruptcy Court is unwilling or unable to hear any such Proceeding, then the courts of the State of Delaware, sitting in New Castle County, Delaware, and the federal courts of the United States of America sitting in New Castle County, Delaware, shall have exclusive jurisdiction over such Proceeding.

Section 5. Each of the parties hereby consents to process being served by any party, respectively, in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.7 of the Purchase Agreement.

Section 6. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS ASSIGNMENT.

Section 7. The provisions of this Assignment shall be deemed severable, and the invalidity or unenforceability of any provision of this Assignment shall not affect the validity

or enforceability of any other provisions of this Assignment so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to any party. If any provision of this Assignment, or the application thereof to any person or any circumstance, is invalid or unenforceable, (a) the parties shall negotiate in good faith to find a suitable and equitable provision that shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Assignment and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability in any one jurisdiction affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 8. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Assignors hereby authorize and request the Commissioner of Patents and Trademarks, and the corresponding entities or agencies in any applicable foreign countries, to record Assignee as the assignee and owner of the entire right, title and interest in and to the Patents, including any reissues, divisions, continuations, continuations-in-part and extensions thereof.

[Signature Page Follows]

**IN WITNESS WHEREOF**, Assignors and Assignee have caused this Assignment to be executed by their duly authorized representatives effective as of the Closing Date.

**ASSIGNORS:**

**NOVAN, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**EPI HEALTH, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNEE:**

**LIGAND PHARMACEUTICALS,  
INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_ day of \_\_\_\_\_, there appeared before me \_\_\_\_\_, personally known to me, who acknowledged that he signed the foregoing Assignment as his voluntary act and deed on behalf and with full authority of Assignors.

\_\_\_\_\_  
Notary Public

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_ day of \_\_\_\_\_, there appeared before me \_\_\_\_\_, personally known to me, who acknowledged that he signed the foregoing Assignment as his voluntary act and deed on behalf and with full authority of Assignee.

\_\_\_\_\_  
Notary Public



**EXHIBIT D**

**Form of Trademark Assignment**

*See attached.*



**FORM OF TRADEMARK ASSIGNMENT**

This TRADEMARK ASSIGNMENT (this “Assignment”), dated as of [•], 2023, by and among Novan, Inc., a Delaware corporation (“Novan”), EPI Health, LLC, a South Carolina limited liability company and wholly-owned subsidiary of Novan (collectively with Novan, “Assignors”) and Ligand Pharmaceuticals Incorporated, a Delaware corporation (“Assignee”).

**WHEREAS, WHEREAS**, Assignors and Assignees have entered into an Amended and Restated Asset Purchase Agreement dated as of September 1, 2023 (the “Purchase Agreement”);

**WHEREAS**, capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Purchase Agreement;

**WHEREAS**, pursuant to the Purchase Agreement, Assignors have agreed to sell, assign, convey, transfer and deliver the Purchased Assets to Assignee, and Assignee has agreed to purchase and acquire the Purchased Assets upon the terms and subject to the conditions of the Purchase Agreement; and

**WHEREAS**, in accordance with the above and pursuant to the Purchase Agreement, Assignors wish to sell, transfer, assign, convey and deliver to Assignee, and Assignee wishes to purchase and acquire from Assignors, all of Assignors’ right, title and interest in, to or under the trademark applications set forth on Schedule A attached hereto, in each case, together with the goodwill of the business associated therewith and the business to which such marks pertain, (collectively, the “Marks”).

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignors hereby sell, transfer, assign, convey and deliver to Assignee, its successors, assigns, and legal representatives their entire right, title and interest in and to the Marks, for the United States and for all foreign countries, including, without limitation, any registrations and applications therefor, any renewals and extensions of the registrations, all goodwill associated therewith and the business to which such Marks pertain, and all other corresponding rights that are or may be secured under the laws of the United States or any foreign country, now or hereafter in effect, for Assignee’s own use and enjoyment, and for the use and enjoyment of Assignee’s successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Assignors if this Assignment had not been made, together with all income, royalties, damages, claims, and payments with respect thereto due or payable as of the Closing Date or thereafter, and in and to all causes of action, including, without limitation, all causes of action (either in law or equity) and claims for damages by reason of past, present or future infringement, dilution or other unauthorized use of the Marks, with the right to sue for, and collect the same for Assignee’s own use and enjoyment and for the use and enjoyment of its successors, assigns or other legal representatives. In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. This Assignment (including the schedules and exhibits hereto and other documents specifically referred to herein), together with the Purchase Agreement and the Related Agreements, constitute the entire agreement among the parties and supersede any prior understandings, agreements or representations (whether written or oral) by or among the parties, written or oral, with respect to the subject matter hereof.

Section 2. No amendment of any provision of this Assignment shall be valid unless the same shall be in writing and signed by each party except as expressly provided herein. No waiver of any breach of this Assignment shall be construed as an implied amendment or agreement to amend or modify any provision of this Assignment.

Section 3. This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. None of the parties may assign either this Assignment or any of its rights, interests or obligations hereunder without the prior written approval of all parties; provided, however, that (i) Assignee shall be permitted to assign any of its rights hereunder to one or more of its affiliates, as designated by Assignee in writing to Assignors; (ii) Assignee shall remain liable for all of its obligations under this Assignment after any such assignment; and (iii) Assignors shall be permitted to assign any of their rights hereunder pursuant to a confirmed plan under Chapter 11 of the Bankruptcy Code or pursuant to an order of the Bankruptcy Court.

Section 4. This Assignment shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, and the obligations, rights and remedies of the parties shall be determined in accordance with such Laws. The parties agree that any Proceeding one party commences against any other party pursuant to this Assignment shall be brought exclusively in the Bankruptcy Court and each of the parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such Proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such Proceeding in the Bankruptcy Court or that any such Proceeding which is brought in the Bankruptcy Court has been brought in an inconvenient forum; provided that if the Bankruptcy Court is unwilling or unable to hear any such Proceeding, then the courts of the State of Delaware, sitting in New Castle County, Delaware, and the federal courts of the United States of America sitting in New Castle County, Delaware, shall have exclusive jurisdiction over such Proceeding.

Section 5. Each of the parties hereby consents to process being served by any party, respectively, in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.7 of the Purchase Agreement.

Section 6. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS ASSIGNMENT.

Section 7. The provisions of this Assignment shall be deemed severable, and the invalidity or unenforceability of any provision of this Assignment shall not affect the validity or enforceability of any other provisions of this Assignment so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to any party. If any provision of this Assignment, or the application thereof to any person or any circumstance, is invalid or unenforceable, (a) the parties shall negotiate in good faith to find a suitable and equitable provision that shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Assignment and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability in any one jurisdiction affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 8. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Assignors hereby authorize and request the Commissioner of Patents and Trademarks, and the corresponding entities or agencies in any applicable foreign countries, to record Assignee as the assignee and owner of the entire right, title and interest in and to the Marks.

[Signature Page Follows]

**IN WITNESS WHEREOF**, Assignors and Assignee have caused this Assignment to be executed by their duly authorized representatives effective as of the Closing Date.

**ASSIGNORS:**

**NOVAN, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**EPI HEALTH, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNEE:**

**LIGAND PHARMACEUTICALS,  
INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_ day of \_\_\_\_\_, there appeared before me \_\_\_\_\_, personally known to me, who acknowledged that he signed the foregoing Assignment as his voluntary act and deed on behalf and with full authority of Assignors.

\_\_\_\_\_  
Notary Public

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_ day of \_\_\_\_\_, there appeared before me \_\_\_\_\_, personally known to me, who acknowledged that he signed the foregoing Assignment as his voluntary act and deed on behalf and with full authority of Assignee.

\_\_\_\_\_  
Notary Public

**SCHEDULE A**

**TRADEMARKS**

**[To Come]**

Jurisdiction	Trademark	Reg. No. (App. No.)	Reg. Date (App. Date)

**EXHIBIT E**

**Form of Sale Procedures Order**

*See attached.*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
Debtors. )  
 ) (Jointly Administered)  
 ) **RE: D.I. 16**

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**ORDER (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF SUBSTANTIALLY ALL OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND DESIGNATING LIGAND PHARMACEUTICALS AS A STALKING HORSE BIDDER, (B) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (C) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES AND (D) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an order: (i) approving bidding procedures, substantially in the form attached hereto as **Exhibit 1** (the "Bidding Procedures"), to be used in connection with one or more sales (each a "Sale") of the Debtors' development and commercialization rights to their research and development portfolio (the "R&D Assets") and to the rights to commercialize the Debtors' commercial portfolio (the "Commercial Assets," and together with the R&D Assets, the "Assets," as more fully defined in the Bidding Procedures) free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the Debtors to designate one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee ("Ligand") as the Stalking Horse Bidder for all of the Assets in

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors' federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures (as defined below), or to the extent not defined therein, the Motion or the Stalking Horse APA.





connection with considering the entry of the Bidding Procedures Order; (iii) scheduling one more auctions (each, an “Auction”), if necessary, and schedule one or more hearings to approve a sale of the Debtors’ Assets (a “Sale Hearing”); (iv) approving the form and manner of notice of the proposed Bidding Procedures, the Auction, and the Sale Hearing, substantially in the form attached hereto as **Exhibit 2** (the “Auction Notice”); (v) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Assumed Contracts”) in connection with any Sale (the “Assumption and Assignment Procedures”); (vi) approving the form and manner of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”) of (A) the Debtors’ calculation of the amount necessary to cure any default under the applicable Assumed Contract (the “Cure Amounts”); and (B) certain other information regarding the potential assumption and assignment of Assumed Contracts in connection with a Sale, substantially in the form attached hereto as **Exhibit 3** (the “Assumption and Assignment Notice”); and (vii) granting related relief; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion; and the Bidding Procedures Hearing (as defined herein) having been held; and this Court having found and determined that the relief set forth herein is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion and at the Bidding Procedures Hearing, as

applicable, establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**<sup>3</sup>

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105, 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

D. In the Motion and at the hearing on the relief set forth herein (the “Bidding Procedures Hearing”), the Debtors demonstrated that good and sufficient notice of the relief granted by this Bidding Procedures Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Bidding Procedures Order (including, without limitation, with respect to the Bidding Procedures) has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

E. The Bidding Procedures attached hereto as **Exhibit 1** are fair, reasonable, and appropriate and are designed to maximize the value of the proceeds of Sale of the Debtors' Assets. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c) and are reasonably designed to promote active bidding and participation in the Auction to ensure that the highest or otherwise best value is generated for the Assets.

F. The Assumption and Assignment Procedures are fair, reasonable, and appropriate and comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

G. The Debtors have articulated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures, (ii) the form and manner of Auction Notice; (iii) designation of Ligand as the Stalking Horse Bidder, and the Debtors' entry into the Stalking Horse APA, subject to the procedures set forth herein and entry of the Sale Order; (iv) the form and manner of the Assumption and Assignment Notice; and (v) the Assumption and Assignment Procedures.

H. The Auction Notice, the Assumption and Assignment Notice, and the Notice of Winning Bidder, are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, the Assumption and Assignment Procedures, the Debtors' proposed Cure Amounts, any proposed assumption of an Assumed Contract in connection with a sale of the Assets, and all relevant and important dates and deadlines with respect to the foregoing, and no other or further notice of the Auction, the sale of the Assets, or the assumption and assignment of Assumed Contracts in connection therewith shall be required.

I. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the

Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties in interest.

J. Entry of this Order is in the best interests of the Debtors, their estates and creditors, and all other interested parties.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein. All objections to the relief granted in this Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

2. The Bidding Procedures attached hereto as **Exhibit 1** are hereby approved and are incorporated herein by reference. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

3. Ligand is designated as the Stalking Horse Bidder pursuant to the terms of the Stalking Horse APA. The Debtors' entry into the Stalking Horse APA is authorized and approved, and the Stalking Horse APA shall be subject to higher or better Qualified Bids in accordance with the terms and procedures of the Stalking Horse APA, this Bidding Procedures Order, and the Bidding Procedures. The Stalking Horse Bid's \$15 million aggregate Purchase Price (as defined in the Stalking Horse APA) for the Assets is allocated at (i) \$12 million for the R&D Assets and (ii) \$3 million for the Commercial Assets; provided, however, that the Stalking Horse Bidder shall not reallocate any of the initial \$3 million offered for the Commercial Assets

to the initial \$12 million offered for the R&D Assets or vice versa in any subsequent bid without the prior consent of the Debtors and the Committee, but for the avoidance of doubt, the Stalking Horse Bidder may increase the amounts offered for the R&D Assets and/or the Commercial Assets in any subsequent bid with incremental consideration above the aggregate \$15 million Purchase Price. The Stalking Horse Bidder, and the Stalking Horse Bid, shall be deemed a Qualified Bidder and Qualified Bid, respectively, under this Bidding Procedures Order and the Bidding Procedures.

4. Within three (3) business days after the entry of this Bidding Procedures Order, the Debtors shall to serve the Auction Notice, substantially in the form attached to this Bidding Procedures Order, on: (a) the U.S. Trustee; (b) counsel to the Stalking Horse Bidder; (c) counsel to the Official Committee of Unsecured Creditors (the “Creditors’ Committee”); (d) all parties known by the Debtors to assert a lien or encumbrance on any of the Assets; (e) all persons known or reasonably believed to have asserted an interest in or claim to any of the Assets; (f) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets within the one (1) year prior to the Petition Date; (g) the Office of the United States Attorney for the District of Delaware; (h) the Office of the Attorney General in each state in which the Debtors have operated; (i) the Office of the Secretary of State in each state in which the Debtors have operated; (j) the Internal Revenue Service and all state and local taxing authorities in the states in which the Debtors have or may have any tax liability; (k) the Securities and Exchange Commission; (l) the Federal Trade Commission; (m) all of the Debtors’ other known creditors and equity security holders; and (n) all other parties that have filed a notice of appearance and demand for service of papers in these chapter 11 cases (the “Chapter 11 Cases”) as of the service date.

5. The Debtors shall post the Auction Notice and this Bidding Procedures Order on the Debtors' claims and noticing agent's website. Within seven (7) calendar days of the entry of this Bidding Procedures Order, the Debtors shall cause the Auction Notice to be published once in the national edition of USA Today or another nationally circulated newspaper, with any modifications necessary for ease of publication. Publication of the Auction Notice as described in this Bidding Procedures Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008 and is reasonably calculated to provide notice to any affected party, including, without limitation, any potential bidders, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Bidding Procedures Order.

6. Except objections relating to the conduct of the Auction, the Auction results, the selection of any Winning Bid and/or Back-Up Bid, or the terms of any Sale to a Winning Bidder and/or Back-Up Bidder, which may be filed as part of a Winning Bid Objection (as defined below), all objections to the sale of the Assets (each, an "Initial Sale Objection"), including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to a Winning Bidder and/or a Backup Bidder (as applicable), shall be (i) be in writing; (ii) state with specificity the grounds for such objection; (iii) comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court by no later than **August 28, 2023, at 4:00 p.m. (ET)** (the "Initial Sale Objection Deadline"); and (v) served on the Notice Parties (as such term is defined in the Bidding Procedures).

7. Subject to this Bidding Procedures Order and the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right, in consultation with the Notice Parties, to: (a) determine which bidders qualify as Qualified Bidders (except that the Stalking

Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse APA a Qualified Bid, as set forth herein), and which bids qualify as Qualified Bids; (b) make final determinations as to whether the Debtors will conduct an Auction; (c) select Baseline Bid(s); (d) determine the amount of each minimum overbid; (e) determine which Qualified Bid is the highest or otherwise best bid for the Assets, and therefore the Winning Bid, and which Qualified Bid is the next highest and next best bid after the Winning Bid for the Assets, and therefore the Back-Up Bid; (f) reject any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of this Bidding Procedures Order or any other applicable order of the Court, the Bidding Procedures, the Bankruptcy Code, or other applicable law; or (iii) contrary to the best interests of the Debtors and their estates; and (g) adjourn or cancel the Auction or the Sale Hearing solely in accordance with the Bidding Procedures; provided, however, that under no circumstance may a bid for the R&D Assets, other than the Stalking Horse Bid, qualify as a Qualified Bidder if it does not provide for the unaltered assumption and assignment of the Development Funding and Royalties Agreement, dated as of May 4, 2019 (as amended from time to time), to which the Stalking Horse Bidder and Novan, Inc. are parties (the "Royalty Agreement").

8. Subject to this Bidding Procedures Order and the Bidding Procedures, Debtors shall have the right, in their reasonable discretion and in consultation with the Notice Parties, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualified Bidder. Pursuant to the Bidding Procedures, and notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualified Bidders, *provided* that such Qualified Bidders have delivered an

executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualified Bidders in connection with the Bidding Procedures or the Sale. A bidder that is bidding solely on the Commercial Assets will not be required to assume the Royalty Agreement to be deemed a Qualified Bidder.

9. Except as otherwise provided in the Bidding Procedures, this Bidding Procedures Order, and without prejudice to the rights of the DIP Lender under the DIP Facility (as approved by the DIP Order<sup>4</sup>) or the Stalking Horse Bidder under the Stalking Horse APA, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, in consultation with the Notice Parties, shall have the right to modify the Bidding Procedures, including to (a) extend, modify, adjourn, or waive dates, deadlines or other terms and conditions set forth herein or in the Bidding Procedures; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are reasonably disclosed to Qualified Bidders; and (c) promote competitive bidding for and maximizing the value of the Assets; provided, however, that under no circumstance may (i) any of the forgoing potential modifications and/or additional rules and procedures be materially inconsistent with the existing terms of this Bidding Procedures Order and the Bidding Procedures without the consent of Ligand and the Creditors' Committee; and (ii) a bid for the R&D Assets, other than the Stalking Horse Bid, qualify as a Qualified Bidder if it does not provide for the unaltered assumption and assignment of the Royalty Agreement.

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<sup>4</sup> "DIP Order" means as of any date of determination (i) that certain *Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* that was entered by the Bankruptcy Court on July 21, 2023 [Dkt. No. 54] (the "Interim Order") or (ii) the Final Order (as defined in the Interim Order), whichever such Order is then in effect.



10. The Stalking Horse Bidder shall be considered a Qualified Bidder for the Assets, and the Stalking Horse Bid shall be considered a Qualified Bid without regard to any of the requirements or conditions set forth in the Bidding Procedures and without any other or further action by the Stalking Horse Bidder. As part of its Stalking Horse Bid, Ligand shall be entitled to pay the Purchase Price under the Stalking Horse APA, and fund Overbids during the Auction if there is competitive bidding, with (i) an offset, on a dollar-for-dollar basis, against the Debtors' Obligations (as defined in the DIP Facility) under the DIP Facility as approved by the DIP Order; and/or (ii) cash. The Stalking Horse Protections forth in the Motion have been waived by Ligand as the Stalking Horse Bidder.

11. A Qualified Bidder, other than a Stalking Horse Bidder, that desires to make a bid shall deliver an electronic copy of its bid in both PDF and MS-WORD format so as to be received via email on or before **August 28, 2023, at 5:00 p.m. (ET)** (the "Bid Deadline"), by: (a) the Debtors' proposed investment banker, Raymond James & Associates (Attn: Geoffrey Richards ([geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)) and Simon Wein ([simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)); (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP; and (c) proposed counsel to the Creditors' Committee, Goodwin Procter, LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel ([hsteel@goodwinlaw.com](mailto:hsteel@goodwinlaw.com)) and Barry Bazian ([bbazian@goodwinlaw.com](mailto:bbazian@goodwinlaw.com))). The Debtors may extend the Bid Deadline without further order of the Court pursuant to the terms of Paragraph 9 herein and the Bidding Procedures. Any party that does not submit a bid by the Bid Deadline will not be allowed to (i) submit any offer after the Bid Deadline or (ii) participate in the Auction.

12. Within one (1) business day after receipt thereof, the Debtors will deliver copies of all bids from Qualifying Bidders to the Notice Parties. The Debtors, in consultation with the Notice Parties, shall make a determination regarding whether a timely submitted bid from a Qualified Bidder is a Qualified Bid. No later than one (1) business day prior to the Auction, the Debtors shall: (a) notify all Qualified Bidders whether their bids have been determined to be a Qualified Bid; and (b) determine, in consultation with the Notice Parties, which of the Qualified Bids, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid of the Auction (a “Baseline Bid” and the Qualifying Bidder submitting such Baseline Bid, a “Baseline Bidder”), and shall promptly notify all Qualified Bidders with Qualified Bids of the Baseline Bid.

13. If the Debtors do not receive a Qualified Bid other than a Stalking Horse Bid, the Stalking Horse Bid shall be deemed the Winning Bid for the Assets, and the Debtors shall request at the Sale Hearing that the Court approve such Winning Bid and the transactions contemplated thereunder for the Assets.

14. The Auction Procedures are hereby approved. If the Debtors timely receive one or more Qualified Bids for the Assets, then the Debtors shall conduct one or more auctions (each, an “Auction”) commencing on **August 31, 2023, at 10:00 a.m. (ET)**, at the offices of Raymond James & Associates, Inc., 320 Park Avenue, Floor 12, New York, New York 10022, or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants. If held, the Auction proceedings shall be transcribed or video recorded.

15. Following the Auction, the Debtors will determine, in consultation with the Notice Parties, which Qualified Bid is the highest or otherwise best bid for the Assets, in whole

or in part, which will be determined by considering, among other things, the following non-binding factors: (a) the number, type, and nature of any changes to the Stalking Horse APA requested by each bidder; (b) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (c) the total consideration to be received by the Debtors and their estates; (d) the transaction structure and execution risk, including, without limitation, conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtors' estates; and (f) any other factors the Debtors may reasonably deem relevant.

16. On or before one (1) business day after the selection of any Winning Bid(s), the Debtors shall file a notice with the Court (the "Notice of Winning Bid") that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids.

17. The Sale Hearing shall be held in this Court on **September 11, 2023 at 10:00 a.m. (ET)**, unless otherwise determined by this Court. Subject to the terms and conditions of the DIP Facility (as approved by the DIP Order) and the Stalking Horse APA, the Sale Hearing may be adjourned by the Debtors, in consultation with the Notice Parties and the Winning Bidder(s), from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of the Chapter 11 Cases.

18. Following service of the Notice of Winning Bid, parties may file an objection solely with respect to the conduct of the Auction, the Auction results, the selection of the Winning Bid and/or Back-Up Bid, or the terms of any Sale to the Winning Bidder or the Back-Up Bidder (each, a “Winning Bid Objection”). Any Winning Bid Objection shall be (i) be in writing; (ii) state with specificity the grounds for such objection; (iii) comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court by no later than **September 6, 2023, at 4:00 p.m. (ET)** (the “Winning Bid Objection Deadline”); and (v) served on the Notice Parties. The Debtors and any other entity shall have until **one (1) business day prior to the Sale Hearing, at 12:00 p.m. (ET)**, to file and serve a reply to any Initial Sale Objection or Winning Bid Objection. Any party who fails to file and serve a timely Initial Sale Objection or Winning Bid Objection in accordance with the terms of this Bidding Procedures Order shall be forever barred from asserting, at the Sale Hearing or thereafter, any Initial Sale Objection or Winning Bid Objection including any such objection to the relief requested in the Motion or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the applicable Winning Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to consent to such sale for purposes of section 363(f) of the Bankruptcy Code.

19. The Auction Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the proposed Sale of Assets, the Auction, the Sale Hearing, the Initial Sale Objection Deadline, or the Winning Bid Objection Deadline shall be required if the Debtors serve the Auction Notice in the manner provided in the Bidding Procedures and this Bidding Procedures Order.

20. The following assumption and assignment procedures (the “Assumption and Assignment Procedures”) are hereby approved:

1. On July 25, 2023, the Debtors filed and served the Initial Assumption and Assignment Notice, in the form attached hereto as **Exhibit 4**, via overnight delivery, on any counterparty (a “Counterparty”) to the Debtors’ universe of executory contracts and unexpired leases that may be designated Assumed Contracts. This notice included: (a) notice that such Counterparty’s contract may be subject to assumption and assignment in the Sale and thus designed an Assumed Contract; (b) the Cure Amount if any, that the Debtors believe is required to be paid to the Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for such Assumed Contract; and (c) the Adequate Assurance Information of the Stalking Horse Bidder. The inclusion of any executory contract or unexpired commercial real property lease on the Initial Assumption and Assignment Notice shall not constitute an admission that a particular contract is an executory contract or unexpired lease or require or guarantee that such contract will be an Assumed Contract.
  
2. On or before one (1) business day after the selection of a Winning Bid or a Back-Up Bid, the Debtors shall file with this Court and serve the Additional Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 3**, via overnight delivery, on any Counterparty to the Debtors’ universe of executory contracts and unexpired leases that may be designated as an Assumed Contract that the relevant Winning Bidder or Back-Up Bidder desires to assume as part of its Winning Bid ***that was not already listed on the Initial Assumption and Assignment Notice***. This notice shall include: (a) notice that such Counterparty’s contract may be subject to assumption and assignment in the Sale and thus designed an Assumed Contract as part of the relevant Winning Bid; (b) the cure amount if any, that the Debtors believe is required to be paid to the Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for such Assumed Contract (each, a “Cure Amount”) in the event such Assumed Contract is assumed and assigned by the Debtors; and (c) the Adequate Assurance Information of the relevant Winning Bidder and Back-Up Bidder. The inclusion of any executory contract or unexpired commercial real property lease on the Additional Assumption and Assignment Notice shall not constitute an admission that a particular contract is an executory contract or unexpired lease or require or guarantee that such contract will be an Assumed Contract.
  
3. ***Objections to the Initial Assumption and Assignment Notice served in accordance with subparagraph 1 hereof were due on August 8, 2023, unless such deadline was extended by the Debtors.*** If a Counterparty objected to (a) the proposed assumption and assignment of its Assumed Contract set forth in the Initial Assumption and Assignment Notice

(including, without limitation, on the basis (i) that the Stalking Horse Bidder cannot provide adequate assurance of future performance; (ii) of the transfer of any related rights or benefits thereunder; or (iii) that Counterparty consent is allegedly required for the assumption, assignment, and transfer of the Assumed Contract), or (b) the Cure Amount set forth in the Initial Assumption and Assignment Notice, the Counterparty was required to file with the Court and serve on the Notice Parties a written objection (an “Initial Contract Objection”) **on or before August 8, 2023 at 4:00 p.m. (ET)** (the “Initial Contract Objection Deadline”).

4. Objections to the Additional Assumption and Assignment Notice to be served in accordance with subparagraph 2 hereof (an “Additional Contract Objection,” and collectively with an Initial Contract Objection, a “Contact Objection”) shall: (i) be in writing; (ii) state with specificity the grounds for such objection (including, without limitation, on the basis (a) that the Stalking Horse Bidder cannot provide adequate assurance of future performance; (b) of the transfer of any related rights or benefits thereunder; (c) that Counterparty consent is allegedly required for the assumption, assignment, and transfer of the Assumed Contract; or (d) the Cure Amount set forth in the Additional Assumption and Assignment Notice); (iii) comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court **on or before September 6, 2023, at 4:00 p.m. (ET)** (the “Additional Contract Objection Deadline,” and collectively with the Initial Contract Objection Deadline, the “Contact Objection Deadline”); and (v) served on the Notice Parties.
5. With respect to any Contract Objection that is (or was) timely received, the Debtors, the Stalking Horse Bidder or relevant Winning Bidder, and the objecting Counterparty shall first confer in a good faith attempt to resolve the Contract Objection without Court intervention. If the parties are unable to consensually resolve the Contract Objection, the Debtors may request a hearing for the Court to resolve the Contract Objection. In the event a Contract Objection is resolved in a manner unfavorably, the Debtors may withdraw (or the Winning Bidder may cause the Debtor to withdraw) their request to assume and assign such Assumed Contract as part of any Winning Bid. A Contract Objection may be resolved after the closing date of the applicable Sale, subject to the terms of the asset purchase agreement approved in connection with the Sale.
6. If no Contract Objection is timely received with respect to an Assumed Contract: (a) the Counterparty to such Assumed Contract shall be deemed to have consented to the assumption by the Debtors and assignment or transfer (including the transfer of any related rights and benefits thereunder) to the Stalking Horse Bidder or Winning Bidder, as applicable, of the Assumed Contract, and be forever barred and estopped from asserting or claiming against the Debtors or the Stalking Horse Bidder or the Winning Bidder, as applicable, that any additional defaults

exist or that conditions to assumption, assignment, and transfer must be satisfied under the Assumed Contract (including, without limitation, with respect to adequate assurance of future performance by the Stalking Horse Bidder or Winning Bidder, as applicable), or that any related right or benefit under such Contract cannot and will not be available to the Stalking Horse Bidder or the Winning Bidder, as applicable; (b) any and all defaults under the Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the applicable Cure Amount; and (c) the Cure Amount for such Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Assumed Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Assumed Contract against the Debtors and their estates or the Stalking Horse Bidder or Winning Bidder, as applicable, or the property of any of them, that existed prior to the entry of the Sale Order.

7. The Debtors' decision to assume and assign any Assumed Contract to the Stalking Horse Bidder or a Winning Bidder, as applicable, is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of such Sale, the Assumed Contracts shall not be deemed assumed or assumed and assigned and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with the Chapter 11 Cases.

21. The Debtors shall use reasonable best efforts to timely implement the above Assumption and Assignment Procedures and shall not otherwise hinder or delay the assumption and assignment of executory contracts and/or unexpired leases that the Stalking Horse Bidder or such other Qualified Bidder, as applicable, designate as Assumed Contracts as part of the Stalking Horse Bid or Qualified Bid, respectively.

22. The Stalking Horse Bidder shall designate under the Stalking Horse APA as Assumed Contracts and/or as Assumed Liabilities (as such term is defined in the Stalking Horse APA) the following unexpired real property leases, executory contracts and/or other obligations of the Debtors: (i) the Royalty Agreement; (ii) that certain *Royalty and Milestone Payments Purchase Agreement*, dated as of April 29, 2019 (the "Reedy Creek Royalty Agreement") by and

between Novan, Inc. and Reedy Creek Investments LLC, (“Reedy Creek”); provided, however, Stalking Horse Bidder’s assumption of Debtor Novan’s obligations under the Reedy Creek Royalty Agreement shall be subject to the royalty rate and other economics to which Reedy Creek is entitled under the Reedy Creek Royalty Agreement not being improved in connection with such assumption or the Stalking Horse Bidder’s (or its designee’s) post-assumption actions with respect to the R&D Assets and/or the Royalty Agreement, as it may be amended from time to time; provided further, however, that the Royalty Agreement shall be deemed an approved agreement pursuant to any provision of the Reedy Creek Royalty Agreement, including, without limitation, Section 3.7 (to the extent applicable) therein; and (iii) such other contracts of the Debtors related solely to the R&D Assets to be designated on one or more schedules to the Stalking Horse APA in the Stalking Horse Bidder’s sole and absolute discretion (clauses (i)-(iii) collectively, the “Stalking Horse APA Assumed Contracts”). The Debtors are responsible for the payment of all cure costs (up to the full \$15 million amount of the DIP Facility) at the Debtor Novan entity in connection with the Debtors’ assumption and assignment of the Stalking Horse APA Assumed Contracts to the Stalking Horse Bidder; provided, however, that in the event the Stalking Horse Bidder, and the Stalking Horse APA, is (i) the Winning Bidder and the Winning Bid, respectively, for the Sale of the R&D Assets in accordance with the Bidding Procedures, then Ligand’s prepetition liquidated claim in the amount of the \$1 million on account of an outstanding milestone payment under the Royalty Agreement (the “Ligand Milestone Payment”) shall be deemed an allowed general unsecured claim against the Debtor Novan estate; and (ii) not the Winning Bidder and the Winning Bid, respectively, for the R&D Assets in accordance with the Bidding Procedures, then the Royalty Agreement must be assumed by the Winning Bidder for the R&D Assets as set forth in this Bidding Procedures Order and the Bidding



Procedures and the Ligand Milestone Payment shall be paid in full (in cash) by the Debtors to Ligand on or before the closing of the Sale of the R&D Assets to such Winning Bidder.

23. In the event that a Winning Bidder fails to close a Sale on or before **September 26, 2023**, or such date as may be extended by the Debtors in consultation with the Notice Parties, and a Back-Up Bidder has been previously identified, the Debtors shall file a notice (the “Back-Up Bid Auction Notice”) and serve such Back-Up Bid Auction Notice on the U.S. Trustee, the Notice Parties, and those parties who filed a request to receive notice under Bankruptcy Rule 2002. Three (3) business days following the filing of any Back-Up Bid Auction Notice, the Back-Up Bid subject to such Back-Up Bid Auction Notice will be deemed to be the Winning Bid, the Back-Up Bidder will be deemed to be the Winning Bidder, and the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.

24. Any consultation rights provided to the Notice Parties pursuant to the Bidding Procedures shall not limit the Debtors’ discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment. In the event that a member of a Creditors’ Committee submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party, or their legal counsel, established under the Bidding Procedures will be waived without further action; provided, however, that the bidding party will have the same rights as any other Qualified Bidder under the Bidding Procedures. Any failure to specifically identify consultation rights in any section of these Bidding Procedures shall not limit or otherwise impair the rights of the Notice Parties to consult with the Debtors. In the event that the Notice Parties disagree with matters for which the Debtors are required to

consult with the Notice Parties, then the Notice Party shall have the right to seek relief from the Court on an expedited basis to resolve the dispute.

25. Effective as of the date of entry of this Bidding Procedures Order, each of the Debtors and each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, and past, present and future subsidiaries and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits Ligand and its subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof (solely in their capacities as such) (collectively, the “Released Parties”), from any and all liability to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter may have against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of entry of this Bidding Procedures Order; provided, however, that the release set forth above shall not release (i) any claims against or liabilities of a Released Party that a court of competent jurisdiction determines has resulted from such Released Party’s bad faith, fraud, gross negligence, collusion or willful misconduct; (ii) the Committee’s rights to assert a Challenge during the Challenge Period (as such terms are defined in the DIP Order) pursuant to the terms and conditions of the DIP Order; (iii) Ligand

from honoring its obligations to the Debtors under the DIP Facility (as approved by the DIP Order), Stalking Horse APA, this Bidding Procedures Order and the Bidding Procedures.

26. In the event the Stalking Horse Bidder is the Winning Bidder for the R&D Assets, or if the Stalking Horse Bidder is not the Winning Bidder for the R&D Assets but the Royalty Agreement has been assumed by the Winning Bidder for the R&D Assets, and the DIP Obligations (as defined in the DIP Order) are satisfied in full by the Debtors under the DIP Facility (as approved by the DIP Order), then Ligand—in its capacity as the Winning Bidder, the DIP Lender (as defined in the DIP Order), and counterparty to the Royalty Agreement—shall release the Debtors and their estates of all prepetition claims and causes of action pursuant to a mutually agreeable release to be provided in the Sale Order or such other order as agreed by Ligand and the Debtors (in each case subject to Bankruptcy Court approval); provided, however, that the forgoing release shall not release the Ligand Milestone Payment, which shall be treated in accordance with paragraph 22 of this Bidding Procedures Order.

27. The Debtors and the Creditors' Committee acknowledge and agree that they will work to develop one or more chapter 11 plans of liquidation for these Chapter 11 Cases (collectively, the "Chapter 11 Plan") that will incorporate one or more liquidating grantor trusts (as appropriate) formed for the benefit of the Debtors' general unsecured creditors on the effective date of such plans (collectively, the "Liquidating Trust"). The Debtors and the Creditors' Committee agree that the Liquidating Trust, pursuant to a mutually agreeable form of liquidating grantor trust agreement, shall receive assets of the Debtors under the Chapter 11 Plan comprised of (i) Causes of Action<sup>5</sup> owned by Debtor EPI except for Purchased Avoidance

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<sup>5</sup> "**Causes of Action**" means, collectively, any claims, causes of action, demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, defenses, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract,

Actions (as such term is defined in the Stalking Horse APA); (ii) the proceeds of all directors' and officers' liability insurance policies of the Debtors, including any tail insurance policies and rights of the directors and officers thereunder for coverage (i.e., advance of expenses and liability coverage with respect to claims made against such offices and directors); (iii) (a) an amount equal to the accounts receivable owed to or collected by Debtor EPI Health on and after the Petition Date on behalf of prepetition amounts owed; and (b) all proceeds received by the Debtors pursuant to that certain *Motion to Approve Compromise under Rule 9019 // Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Approving Settlement with CSNK Working Capital Finance Corp. d/b/a Bay View Funding* [D.I. 81], in each case of clause (iii)(a) and (b), solely upon the timely satisfaction of each of the Milestones as defined and set forth in paragraph 20 of the Interim Order or the Final Order approving the DIP Facility, as applicable; (iv) \$450,000 in cash to be paid by the Debtors, which represents the now-waived Stalking Horse Protections of the Stalking Horse Bidder consisting of a 3% break-up fee on account of the \$15 million Purchase Price (as defined in the Stalking Horse APA) under the Stalking Horse APA; (v) such other amounts as agreed by the Debtors and the Creditors' Committee, or as determined by the Bankruptcy Court; provided, however, that the cash elements of the foregoing may be first used to fund the allowed fees and expenses incurred by the professionals retained by the Debtors' estates for the Chapter 11 Plan to become effective. Subject to the terms of the Bidding Procedures Order, including satisfaction of certain Milestones as set forth herein, Ligand acknowledges and agrees that it will not take any position to oppose any acts or omissions with the funding of the Litigation Trust as provided in clauses (i) through (iv) of this Paragraph 27.

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in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise.

28. Ligand and Ligand's counsel shall only be a Notice Party in the Bidding Procedures if Ligand is no longer the Stalking Horse Bidder or is no longer participating in the Auction as a bidder.

29. The Debtors and the Creditors' Committee each acknowledge and agree that the Chapter 11 Plan (or any other chapter 11 plan) shall provide for the release and exculpation of each of the Ligand "Released Parties" (as defined in Paragraph 25 herein) to the fullest extent available under applicable law by (i) the Debtors and their estates, and the Creditors' Committee; and (ii) all parties receiving any distributions from the Debtors and/or their estates under such Chapter 11 Plan (or any other chapter 11 plan), with the form of such releases and exculpation subject to Ligand's agreement and consent.

30. In the event that there is a conflict between this Bidding Procedures Order or the Bidding Procedures, on the one hand, and the Motion or a Qualified Bidder's Proposed APA, on the other hand, this Bidding Procedures Order and the Bidding Procedures shall control and govern. If there is a conflict between this Bidding Procedures Order and the Bidding Procedures, this Bidding Procedures Order shall control and govern. If there is a conflict between this Bidding Procedures Order or the Bidding Procedures, on the one hand, and any notice served in connection with the Motion or this Bidding Procedures Order, on the other hand, this Bidding Procedures Order and the Bidding Procedures shall control and govern.

31. Prior to mailing any of the notices approved hereby, the Debtors may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Bidding Procedures Order, and make such other, non-material changes as the Debtors deem necessary or appropriate.

32. Nothing in this Bidding Procedures Order, or any of the Exhibits hereto, shall prevent the Debtors from exercising their fiduciary duties in consummating or otherwise pursuing alternative transactions.

33. Nothing in paragraphs 27 and 29 herein shall be, or be deemed to be, a settlement under Bankruptcy Rule 9019 or a ruling with respect to the terms of any agreement between the parties or of any chapter 11 plan that may be proposed in these cases; provided, however, that those paragraphs contain binding agreements of the parties as set forth therein.

34. This Bidding Procedures Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Bidding Procedures Order, and may, in their sole discretion and without further delay, take any action and perform any act authorized or approved under this Bidding Procedures Order.

35. The requirements set forth in Local Rules 6004-1, 9006-1, and 9013-1 are hereby satisfied or waived.

36. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Bidding Procedures Order.

Dated: August 15, 2023

  
Brendan Linehan Shannon  
United States Bankruptcy Judge

**Exhibit 1**

**Bidding Procedures**

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

In re: )  
 ) Chapter 11  
 NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
 Debtors. )  
 ) (Jointly Administered)  
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**BIDDING PROCEDURES**

On July 17, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtors are maintaining their business and managing their property as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On July 16, 2023, the Debtors entered into an asset purchase agreement (as amended from time to time, the “Stalking Horse APA”) with Ligand Pharmaceuticals, Incorporated (“Ligand” or the “Stalking Horse Bidder”) pursuant to which Ligand proposes to, among other things, purchase, acquire, and take assignment and delivery of the Assets (as defined below) under the Stalking Horse APA (the “Stalking Horse Bid”). The Stalking Horse Bidder, or an affiliate thereof, has provided the Debtors with postpetition financing as the DIP Lender (the “DIP Facility”), pursuant to the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling Final Hearing, and (IV) Granting Related Relief* [D.I. 15] (“DIP Financing Motion”). On July 21, 2023, the Bankruptcy Court entered that certain *Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* that was entered by the Bankruptcy Court on July 21, 2023 [D.I. 54], which approved the DIP Financing Motion on an interim basis.

On August 15, 2023, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [D.I. [●]] (the “Bidding Procedures Order”), granting certain relief requested in the related motion [D.I. 16] (the “Bidding Procedures Motion”),<sup>2</sup> including authorizing the Debtors to solicit bids in accordance with the bidding procedures set forth herein (collectively, the “Bidding Procedures”) to be employed by the Debtors in connection with a proposed sale (the “Sale”) of substantially all of the Debtors’ assets (the “Assets”), free and clear

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not yet defined herein shall have the meaning ascribed to such terms in the Bidding Procedures Motion, the Bidding Procedures Order, or the DIP Financing Motion, as applicable.



of all liens (as defined in section 101(37) of the Bankruptcy Code), encumbrances, claims (as defined in section 101(5) of the Bankruptcy Code), charges, mortgages, deeds of trust, options, pledges, security interests or similar interests, title defects, hypothecations, easements, rights of way, rights of use, encroachments, judgments, rights of setoff, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use other than any assumed liabilities or permitted liens referenced in a Winning Bid (as defined below).

These Bidding Procedures set forth the process by which the Debtors are authorized to conduct the Sale of the Assets described more specifically below.

**ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT:**

Raymond James & Associates, Inc. Geoffrey Richards Simon Wein Telephone: (212) 885-1885 (516) 426-8030 Email: <a href="mailto:geoffrey.richards@raymondjames.com">geoffrey.richards@raymondjames.com</a> <a href="mailto:simon.wein@raymondjames.com">simon.wein@raymondjames.com</a>	or	Morris, Nichols, Arsht & Tunnell LLP Derek C. Abbott (No. 3376) 1201 Market Street, 16th Floor Wilmington, Delaware 19801 Telephone: (302) 658-9200 Facsimile: (302) 658-3989 Email: <a href="mailto:dabbott@morrisnichols.com">dabbott@morrisnichols.com</a>
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*Proposed Counsel for the Debtors*

*Proposed Investment Banker for the Debtors*

**Summary of Key Dates Established by Bidding Procedures**

DATE	DEADLINE/EVENT
<b>July 25, 2023</b>	Deadline to serve the Initial Assumption and Assignment Notice
<b>August 8, 2023</b>	Deadline to file Initial Contract Objections and Objections to the Private Sale Order
<b>August 15, 2023</b>	Bidding Procedures Hearing
Three (3) business days after entry of the Bidding Procedures Order	Deadline to serve Notice of Auction
On or before <b>August 28, 2023</b> (no later than 42 days after the Petition Date)	Deadline for the submission of Qualified Bids (i.e., the Bid Deadline)
<b>August 28, 2023, at 4:00 p.m. (ET)</b>	Deadline to file Initial Sale Objections
One (1) business day prior to the Auction	Deadline for Debtors to designate Qualified Bid(s) and Baseline Bid(s)

<b>August 31, 2023</b> (no later than 45 days after the Petition Date)	Auction
As soon as practicable and not later than one (1) business day after cancellation or completion of the Auction	Deadline to file and serve Notice of Winning Bid(s)
<b>One (1) business day after selection of Winning Bid</b>	Deadline to file and serve an Additional Assumption and Assignment Notice (if applicable)
<b>September 6, 2023 at 4:00 p.m.</b>	Deadline to file Winning Bid Objection or Additional Contract Objections
<b>One (1) business day prior to the Sale Hearing</b>	Deadline to file reply to any Initial Sale Objection or Winning Bid Objection
<b>September 11, 2023 at 10:00 a.m. (ET)</b> (No later than 56 days after the Petition Date)	Sale Hearing and Entry of Sale Order
On or before September 26, 2023 (no later than 71 days after the Petition Date)	Deadline for Winning Bidder(s) to close the transaction contemplated by its Winning Bid

**1. Assets to Be Sold**

The Debtors seek to sell to the Stalking Horse Bidder—subject to the highest and best Qualified Bids of one or more Qualified Bidders other than the Stalking Horse Bidder, subject to Court approval—substantially all of the tangible and intangible Assets of the Debtors as set forth in Section 2.1 of the Stalking Horse APA and the assumption of (i) the specific liabilities of the Debtors that the Staking Horse Bidder has listed in Section 2.3 of the Stalking Horse APA, subject to the specific limits set forth therein (the “Assumed Liabilities”), and (ii) the Cure Amounts owing under the Assumed Contracts; provided, however, that the Assets will not include:

(i) any cash, cash equivalents, accounts receivable, or other assets the Stalking Horse Bidder has identified on one or more schedules to the Stalking Horse APA of excluded assets (the “Excluded Assets”) or any liabilities the Stalking Horse Bidder has listed on one or more schedules to the Stalking Horse APA of liabilities (the “Excluded Liabilities”),

(ii) any accounts payable or any debt or debt-like liabilities (with the understanding that, if there are any debt-like liabilities that cannot be retained by the Debtors, such as a capital lease or deferred revenue obligations, such liabilities will be assumed by the Stalking

Horse Bidder, but the cash payment to be made by the Stalking Horse Bidder at the closing will be reduced by the amount thereof); or

(iii) to the extent not already provided for in these sections 1(i) and 1(ii), Causes of Action<sup>3</sup> owned by Debtor EPI except for Purchased Avoidance Actions (as such term is defined in the Stalking Horse APA); (ii) the proceeds of all directors' and officers' liability insurance policies of the Debtors, including any tail insurance policies and rights of the directors and officers thereunder for coverage (i.e., advance of expenses and liability coverage with respect to claims made against such offices and directors); and (iii) (a) an amount equal to the accounts receivable owed to or collected by Debtor EPI Health on and after the Petition Date on behalf of prepetition amounts owed; and (b) all proceeds received by the Debtors pursuant to that certain *Motion to Approve Compromise under Rule 9019 // Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Approving Settlement with CSNK Working Capital Finance Corp. d/b/a Bay View Funding* [D.I. 81], in each case of clause (iii)(a) and (b), solely upon the timely satisfaction of each of the Milestones as defined and set forth in paragraph 20 of the Interim DIP Order or the Final DIP Order approving the DIP Facility, as applicable.

The Assets will be organized in the following two categories for the purpose of determining whether one or more Qualified Bidders have submitted one or more higher Qualified Bids for the Assets after taking into consideration the initial overbid, bid increments, and other requirements in these Bidding Procedures:

Commercial Assets, including, but not limited to, RHOFADÉ, MINOLIRA, and CLODERM, and all related patents and patent rights, other intellectual property, equipment, supplies and materials, regulatory authorizations (including new drug applications), files and records (including clinical and pre-clinical data), and know-how (the "Commercial Assets"); and

R&D Assets, including, but not limited to, Berdazimer gel, Molluscum Contagiosum, including and all related patents and patent rights, other intellectual property, equipment, supplies and materials, regulatory authorizations (including new drug applications), files and records (including clinical and pre-clinical data), and know-how, including the manufacturing assets and leases related to same, and all other Assets that are not included in Commercial Assets (the "R&D Assets").

**The Debtors will treat a bid for the Commercial Assets without the R&D Assets as a Qualified Bid if such bid is for a purchase price of not less than \$8,000,000. Similarly, the Debtors will treat a bid for the R&D Assets as a Qualified Bid if the bid is for a purchase price of not less than \$13,100,000, which amount reflects the Stalking Horse Bid in the amount of \$12 million, the \$1 million Ligand Milestone Payment in connection with the Royalty Agreement (as defined below), and the Minimum**

<sup>3</sup> "**Causes of Action**" means, collectively, any claims, causes of action, demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, defenses, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise.

**Continuing Bid of \$100,000. Qualified Bids for the R&D Assets (either with or without the Commercial Assets) must assume the Royalty Agreement. For the avoidance of doubt, a Winning Bidder of just the Commercial Assets will not be required to assume the Royalty Agreement. For the further avoidance of doubt, the Debtors will ascribe value to the Stalking Horse Bidder’s assumption of the Reedy Creek Royalty Agreement and will provide the amount of such value to all parties seeking to become Qualified Bidders.**

The sale of the Assets is on an “as is, where is” and “with all faults” basis and without representations, warranties or guarantees, express, implied or statutory, written or oral, of any kind, nature or description, by the Debtors, its affiliates or their respective representatives, except to the extent set forth in the Stalking Horse APA or the purchase agreement of such other Winning Bidder (as defined below) and as approved by the Court. Except as otherwise provided in such approved purchase agreement, all of the Debtors’ right, title and interest in and to each Asset to be acquired shall be sold free and clear of all liens, claims, interests and encumbrances (other than permitted liens), with such liens, claims, interests and encumbrances to attach to the proceeds of the Sale.

**Any general objections to the Sale, including objections to the sale of any Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to a Winning Bidder or a Back-Up Bidder (an “Initial Sale Objection”), shall be (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties (as defined below) no later than August 28, 2023, at 4:00 p.m. (ET).** For the avoidance of doubt, Initial Sale Objections do not include objections to the conduct at any Auction, the selection of a Winning Bid and/or Back-Up Bid, or the terms of any Sale to a Winning Bidder or the Back-Up Bidder, which need not be filed until after the filing of a Notice of Winning Bid (each term as defined below), or the assignment of any Assumed Contracts, which are governed by different objection deadlines set forth in the Bidding Procedures Order.

The Stalking Horse APA, which includes, among other things, a description of the Assets, customary representations, warranties, and covenants by and from the Debtors and Ligand, is posted in the Data Room (as defined below), and may also be obtained by Interested Parties upon request to the Debtors’ advisors.

## **2. Participation Requirements**

A person or entity (an “Interested Party”) that wishes to conduct diligence about the Debtors may request access to the Debtors’ confidential electronic data room concerning the Assets (the “Data Room”). To gain access to the Data Room, and thus be able to conduct due diligence on the Debtors and participate in the bidding process, an Interested Party must first become a “Qualified Bidder.” To become a Qualified Bidder, an Interested Party must submit to the Debtors and their advisors:

- (a) a written disclosure of each entity that will be bidding or otherwise participating in connection with such bid (including each equity holder or other financial

backer of the Interested Party, including if such Interested Party is an entity formed for the purpose of consummating the proposed transactions to be set forth in a Proposed APA (as defined below) contemplated by such Interested Party), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Qualified Bid. Each Interested Party must also include the contact information for the specific person(s) and counsel whom the Debtors or their advisors should contact regarding such Qualified Bid;

- (b) a statement and other factual support demonstrating to the Debtors' satisfaction, in consultation with the Notice Parties, in the exercise of their reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing some or all of the Assets;
- (c) preliminary proof by the Interested Party of its financial capacity to close the Interested Party's proposed transaction(s) to be set forth in a Proposed APA, which may include financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the desired Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors in consultation with their advisors and the Notice Parties; and
- (d) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to an Interested Party) in form and substance satisfactory to the Debtors (without limiting the foregoing, each confidentiality agreement executed by an Interested Party shall contain standard non-solicitation provisions) (each, a "Confidentiality Agreement");

An Interested Party that delivers the documents and information described above or that the Debtors determine, subject to the limitations in these Bidding Procedures, in consultation with the Notice Parties, is able to consummate the Sale, and whose Qualified Bid is received by the Debtors no later than the Bid Deadline (as defined below) is deemed qualified (a "Qualified Bidder").

For all purposes under these Bidding Procedures, the Stalking Horse Bidder will be considered a Qualified Bidder, and the Stalking Horse Bid shall be considered a Qualified Bid without regard to any of the requirements or conditions set forth herein and without any other or further action by the Stalking Horse Bidder.

### **3. Designation of the Stalking Horse Bidder**

The Stalking Horse Bidder has waived its request for a break-up fee of 3% of its \$15 million Purchase Price. The Stalking Horse Bidder shall be considered a Qualified Bidder, and a Stalking Horse Bid shall be considered a Qualified Bid without regard to any of the requirements or conditions set forth in the Bidding Procedures and without any other or further action by the Stalking Horse Bidder.

No bidder or any other party shall be entitled to any termination or “break-up” fee, expense reimbursement, or any other bid protections in connection with the submission of a bid for any Assets, or for otherwise participating in the Auction or the sale process.

#### **4. Notice Parties.**

The term “Notice Parties” as used in these Bidding Procedures shall mean: (i) the Debtors; (ii) proposed counsel to the Debtors; (iii) Ligand, but only if Ligand is no longer the Stalking Horse Bidder or is otherwise no longer participating in the Auction; (iv) counsel to Ligand, but only if Ligand is no longer the Stalking Horse Bidder or is otherwise no longer participating in the Auction; and (v) proposed counsel to the official committee of unsecured creditors appointed in the Chapter 11 Cases (the “Creditors’ Committee”).

#### **5. Bankruptcy Court Jurisdiction**

Each Qualified Bidder and any other Interested Party that seeks to become a Qualified Bidder in accordance with Section 2 above, shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of such parties; (b) bring any such action or proceeding in the Court; and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including, without limitation, all appeals, shall be conclusive and may be enforced in other jurisdictions (including, without limitation, any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

#### **6. Due Diligence**

The Debtors will provide, in consultation with the Notice Parties, a Qualified Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: (a) the Debtors’ proposed investment banker, Raymond James & Associates (Geoffrey Richards ([geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)) and Simon Wein ([simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)); (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16<sup>th</sup> Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. ([dabbott@morrisonichols.com](mailto:dabbott@morrisonichols.com)); (c) the proposed counsel to the Creditors’ Committee, Goodwin Procter, LLP, The New York times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel ([hsteel@goodwinlaw.com](mailto:hsteel@goodwinlaw.com)) and Barry Bazian ([bbazian@goodwinlaw.com](mailto:bbazian@goodwinlaw.com))); and (d) proposed financial advisor to the Creditors’ Committee, Dundon Advisers LLP, proposed financial advisors to the Joshua Nahas, Ten Bank Street, Suite 1100, White Plains, New York 10606, ([jn@dundon.com](mailto:jn@dundon.com)). The due diligence period shall extend through and include the Bid Deadline (as defined below). Additional due diligence will not be provided after the Bid Deadline, unless otherwise deemed reasonably appropriate by the Debtors in consultation with the Notice Parties. The Debtors reserve the right, in consultation with the Notice Parties, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualified Bidder.

Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized, in consultation with the Notice Parties, to provide due diligence information to Qualified Bidders, *provided* that such Qualified Bidders have delivered an executed Confidentiality Agreement in form and substance acceptable to the Notice Parties. The Debtors and their estates and the Notice Parties are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualified Bidders in connection with the Bidding Procedures and the Sale.

Each Interested Party other than the Stalking Horse Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Interested Party and its contemplated transaction. If the Debtors, after consultation with the Notice Parties, determine at any time in their reasonable discretion that an Interested Party is not reasonably likely to be a Qualified Bidder, then the Debtors' obligation to provide due diligence information to such Interested Party will terminate, and all information provided by the Debtors prior to such time shall be returned to the Debtors in accordance with the terms of the applicable Confidentiality Agreement.

#### 7. Bid Requirements

Other than in the case of a Stalking Horse Bid, which shall be considered a Qualified Bid, to be deemed a "Qualified Bid," a bid must be received from a Qualified Bidder on or the Bid Deadline and satisfies each of the following requirements (each, a "Bid Requirement"):

- (a) be in writing and received by the Notice Parties prior to the Bid Deadline;
- (b) fully discloses the identity of the Qualified Bidder (and to the extent that the Qualified Bidder is a newly formed acquisition entity or the like, the identity of the Qualified Bidder's parent company or sponsor), and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualified Bidder;
- (c) states that the applicable Qualified Bidder offers to (a) purchase, in cash, all of the Assets upon the same terms and conditions, and pursuant to the same form and substance of the Stalking Horse APA modified only by scope of purchased assets, purchase price, and identity of the purchaser, that the Debtors, in consultation with the Notice Parties, reasonably determine are higher than those set forth in the Stalking Horse APA (which determination with respect to the Commercial Assets and the R&D Assets may be made by considering bids submitted by more than one Qualified Bidder in combination); and (b) take assignment of all Assumed Contracts under Stalking Horse APA with details of the Qualified Bidder's proposal for the treatment of related Cure Amounts and the provision of adequate assurance of future performance to the counterparties to such Assumed Contracts; provided, however, that if the Stalking Horse Bidder withdraws from the bidding process, any bid made subsequent to such withdrawal will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and if the Debtors

determine, in consultation with the Notice Parties, such bid complies with these Bidding Procedures as applicable; provided further, however, that under no circumstances may any bid of any bidder for the R&D Assets, other than the Stalking Horse Bid, be deemed a Qualified Bid if it does not provide for the unaltered assumption and assignment (the “Royalty Assumption”) to the bidder of that certain Development Funding and Royalties Agreement, dated as of May 4, 2019 (as amended from time to time), to which the Stalking Horse Bidder and Novan, Inc. are each a party (the “Royalty Agreement”) (for the avoidance of doubt, the Royalty Assumption is inapplicable to a Qualified Bid for just the Commercial Assets); provided further, however, that bids for both the R&D Assets and Commercial Assets must include an allocation of the proposed purchase price between such assets;

- (d) includes a signed writing stating that the Qualified Bidder’s offer is irrevocable until the selection of the Winning Bidder; provided, however, that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder;
- (e) does not contain any contingencies of any kind including, without limitation, contingencies related to financial, due diligence, or internal or shareholder approvals in connection with the submission of a Qualified Bid, and there is no condition precedent to the Qualified Bidder’s ability to enter into a definitive Sale agreement;
- (f) provides the date by which the Qualified Bidder intends to close the Sale; provided, however, that the proposed closing date is on or before September 25, 2023;
- (g) contains no due diligence or financing contingencies of any kind;
- (h) includes a duly authorized and executed copy of an asset purchase agreement, which includes the purchase price for the Assets, as allocated for each asset category and in the aggregate, expressed in U.S. Dollars that are greater the \$15 million Purchase Price for all of the Assets (or greater than the \$8 million Purchase Price for only the Commercial Assets or greater than the \$12 million Purchase Price for only the R&D Assets, as noted above, in the Stalking Horse APA, plus payment of the \$1 million Ligand Milestone Payment in connection with the R&D Assets), plus the Minimum Continuing Bid of \$100,000, together with all exhibits and schedules thereto, together with a blackline copy to show any modifications to the Stalking Horse APA (a “Proposed APA”);
- (i) includes a proposed sale order (each, a “Proposed Sale Order”) based on the Debtors’ proposed sale order, and a Qualified Bid must also include a blackline copy of the Proposed Sale Order to show any proposed modifications to the Debtors’ proposed sale order;



- (j) specifies the liabilities proposed to be paid or assumed by such Qualified Bid;
- (k) includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, establishing the ability of the Qualified Bidder to consummate the proposed Sale and pay the purchase price in cash, such as will allow the Debtors, in consultation with the Notice Parties, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Proposed APA;
- (l) states or otherwise estimates the types of transition services, if any, the Qualified Bidder would require of and/or provide to the Debtors, including an estimate of the time any such transition services would be required of and/or provided to the Debtors, if the Qualified Bidder's bid were selected as the Winning Bid for the applicable Assets;
- (m) includes an acknowledgement and representation that the bidder: (a) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (b) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (c) 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 Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Proposed APA; and (d) is not entitled to any expense reimbursement, break-up fee, or similar type of bid-protections or payments in connection with its bid;
- (n) includes evidence, in form and substance reasonably satisfactory to the Debtors and the Notice Parties, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Proposed APA;
- (o) is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to 10% of the cash portion of the purchase price provided for in the bid (a "Deposit");
- (p) acknowledges in writing (a) that it has not engaged in any collusion with respect to any Qualified Bid, specifying that it did not agree with any other party, including, but not limited to, any other Interested Parties or interested third parties, to control price or exert undue influence over the process; and (b) agree not to engage in any such collusion or undue influence with respect to any Qualified Bids, the Auction, or the Sale process;
- (q) states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court;

- (r) contains such financial and other information to allow the Debtors to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to close the transactions contemplated by the Proposed APA, including, without limitation, such financial and other information supporting the Qualified Bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualified Bidder’s financial wherewithal and willingness to perform under any Assumed Contracts (“Adequate Assurance Information”). By submitting a Bid, the Qualified Bidders agree that the Debtors may disseminate their Adequate Assurance Information to the Creditors’ Committee and, upon request, to Counterparties;
- (s) contains such other information as may be reasonably requested by the Debtors, in consultation with the Notice Parties;
- (t) sets forth (i) a statement or evidence that the Qualified Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings, and (ii) any regulatory and third-party approvals required for the Qualified Bidder to close the transactions contemplated by the Proposed APA, and the time period within which the Qualified Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Qualified Bidder’s Proposed APA, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); provided that a Qualified Bidder agrees that its legal counsel will coordinate in good faith with the Debtors’ legal counsel to discuss and explain Qualified Bidder’s regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Proposed APA; provided, further that the offer contains a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder’s operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;
- (u) provides for the Qualified Bidder to serve as the Back-Up Bidder (as defined below) if the Qualified Bidder’s bid is the Back-Up Bid (as defined below), in accordance with the terms of the Proposed APA as submitted or modified at the Auction; and
- (v) provides that in the event of the Qualified Bidder’s breach of, or failure to perform under, the Proposed APA, the Qualified Bidder shall forfeit its Deposit to the Debtors, and the Debtors shall be entitled to pursue all available legal and equitable remedies, including, without limitation, additional damages and/or specific performance.

A bid from a Qualified Bidder satisfying all of the above requirements, as determined by the Debtors, in consultation with the Notice Parties, shall constitute a Qualified Bid. The Debtors reserve the right to work with any Qualified Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid. As noted above, the Debtors, in consultation with the Notice Parties, may determine that separate bids for less than all of the Assets constitute a single Qualified Bid for all, substantially all, or any portion of the Assets; *provided* that such bids must satisfy the Bid Requirements. Each Qualified Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

### **8. Stalking Horse Bidding**

The Stalking Horse Bidder may increase its bid with cash or credit against obligations owed by the Debtors under the DIP Facility and/or under the Prepetition Credit Agreement. The Stalking Horse Bidder may pay the Purchase Price under the Stalking Horse APA, and fund Overbids during the Auction if there is competitive bidding, with (i) an offset, on a dollar-for-dollar basis, against the Debtors' Obligations (as defined in the DIP Facility) under the DIP Facility; and/or (ii) cash.

Notwithstanding anything to the contrary set forth in these Bidding Procedures, the Stalking Horse Bidder shall be deemed to be a Qualified Bidder and shall not be required to provide any due diligence materials (or any other materials), a Deposit, or satisfy any other Qualified Bidder requirements as a condition to its participation at the Auction and may participate in the Auction with respect to all or any portion of the Assets.

The Stalking Horse Bidder shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the Assets or a portion of the Assets.

### **9. Bid Deadline**

A Qualified Bidder, other than a Stalking Horse Bidder, that desires to make a bid shall deliver an electronic copy of its bid in both PDF and MS-WORD format so as to be received via email on or before **August 28, 2023 at 5:00 p.m. (ET)** (the "**Bid Deadline**"), by (a) the Debtors' proposed investment banker, Raymond James & Associates (Attn: Geoffrey Richards ([geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)) and Simon Wein ([simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)); (b) the Debtors' proposed counsel, Morris, Nichols, Arsht & Tunnell LLP; and (c) proposed counsel to the Creditors' Committee, Goodwin Procter, LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel ([hsteel@goodwinlaw.com](mailto:hsteel@goodwinlaw.com)) and Barry Bazian ([bbazian@goodwinlaw.com](mailto:bbazian@goodwinlaw.com))). The Debtors, in consultation with the Notice Parties, may extend the Bid Deadline without further order of the Court. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (x) submit any offer after the Bid Deadline or (y) participate in the Auction.**

## 10. Evaluation of Qualified Bids

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all bids from Qualifying Bidders to the Notice Parties. The Debtors, in consultation with the Notice Parties, shall make a determination regarding whether a timely submitted bid from a Qualified Bidder is a Qualified Bid.

A Qualified Bid, other than the Stalking Horse Bid, will be valued by the Debtors, in consultation with the Consultation Parties, based upon several factors including, without limitation, (1) the amount of the Purchase Price provided by such bid, (2) the nature of the consideration provided by such bid, including, with respect to the R&D Assets, whether the Qualified Bid assumes the Reedy Creek Royalty Agreement, (3) the risks and timing associated with consummating such bid, (4) any proposed revisions to the Stalking Horse APA and/or the Debtors' form of proposed Sale Order, (5) whether any Qualified Bid contains a sufficient cash component to ensure that the Debtors' estates is not rendered administratively insolvent, and (6) any other factors deemed relevant by the Debtors, in consultation with the Notice Parties.

Notwithstanding the foregoing, the only way a Qualified Bid (other than of the Stalking Horse Bid) can be determined to be higher or otherwise better than the value of the Stalking Horse Bid before the commencement of competitive bidding, it must be (a) equal to or higher than the \$15 million Purchase Price in the Stalking Horse APA plus the Minimum Continuing Bid of \$100,000, and provide for the assumption and assignment of the Royalty Agreement if for all of the Assets, (b) equal to or higher than a \$12 million Purchase Price and provide for the assumption and assignment of the Royalty Agreement (including payment of the \$1 million Ligand Milestone Payment) if for only the R&D Assets, or (c) equal to or higher than an \$8 million Purchase Price if for only the Commercial Assets.

No later than one (1) business day prior to the Auction, the Debtors shall: (i) notify all Qualified Bidders whether their bids have been determined to be a Qualified Bid; and (ii) determine, in consultation with the Notice Parties, which of the Qualified Bids for the Assets for which a Qualified Bid has been submitted, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid(s) for the applicable Assets at the Auction (each, a "Baseline Bid," and the Qualifying Bidder submitting such Baseline Bid, a "Baseline Bidder"), and promptly notify all Qualified Bidders with Qualified Bids of the Baseline Bids.

## 11. No Qualified Bids

If the Debtors do not receive any Qualified Bids other than the Stalking Horse Bid, the Debtors will not conduct the Auction for the Assets, will file with the Court within twenty-four hours after the Bid Deadline, a notice indicating that the Auction for the Assets has been canceled. In such event, the Stalking Horse Bidder will be deemed the Winning Bidder, the Stalking Horse APA will be the Winning Bid, and the Debtors will as expeditiously as possible seek final Court approval of the sale of the Assets to the Stalking Horse Bidder as contemplated by the Stalking Horse APA.

## 12. Auction

If the Debtors receive one or more Qualified Bids, the Debtors will conduct the Auction, which shall take place at **10:00 a.m. prevailing Eastern Time on August 31, 2023**, or such other date and time (with the consent of Ligand and the Creditors' Committee) as shall be timely communicated to all entities entitled to attend the Auction. The Auction, which shall be recorded or transcribed, shall run in accordance with the following procedures (the "Auction Procedures"):

- (a) the Auction shall commence, after consulting with the Notice Parties, at the offices of Raymond James & Associates, Inc., 320 Park Avenue, Floor 12, New York, New York 10022, or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below). The Debtors shall file notice of any change in the date, time, or location of the Auction.
- (b) only Qualified Bidders with Qualified Bids, including the Stalking Horse Bidder (collectively, the "Auction Bidders", and each, an "Auction Bidder") shall be entitled to make any subsequent bids at the Auction;
- (c) the Auction Bidders shall appear at the Auction, or through a duly authorized representative;
- (d) only (i) the Debtors, (ii) the Auction Bidders, (iii) the Notice Parties, (iv) any other creditor of the Debtors who desires to attend the Auction and provides no less than three (3) days' advance written notice, together with the advisors to each of the foregoing parties, may attend the Auction (collectively, the "Auction Participants"). Each Auction Participant shall provide counsel for the Debtors written notice of their intent to attend the Auction no later than 5:00 p.m. (ET), three (3) days prior to the Auction, to proposed counsel for the Debtors, Morris Nichols, Arsht & Tunnell LLP; provided, however, that in the event an Auction Bidder elects not to attend the Auction, such Auction Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Auction Bidder until the selection of the Winning Bidder and Back-Up Bidder at the conclusion of the Auction; provided further, however, that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder. Prior to the time scheduled for the commencement of the Auction (as provided in these Bidding Procedures), the Debtors may provide to all Auction Bidders (including the Stalking Horse Bidder) copies of each Qualified Bid and identify to them the Qualified Bid that the Debtors believe, after consultation with the Notice Parties, is the Baseline Bid;
- (e) the Debtors and their advisors shall direct and preside over the Auction, which shall be transcribed;

- (f) prior to start of the Auction, each Auction Bidder shall confirm that it has not engaged in any collusion, within the meaning of Section 363(n) of the Bankruptcy Code, with respect to the Bidding Procedures, the Auction, or the Sale;
- (g) bidding at the Auction will begin with the Baseline Bid and continue in bidding increments (each, a “Subsequent Bid”) providing a value to the Debtors’ estates of at least \$100,000 in additional cash (the “Minimum Continuing Bid”), or such other amount determined by the Debtors in consultation with the Notice Parties, above the prior bid or collection of bids (each, an “Overbid”); provided, however, that the such cash requirement for Overbids shall not apply to Stalking Horse Bidder, which may fund Overbids via offsets against the Debtors’ obligations under the DIP Facility as provided in Paragraph 8 above. After each round of bidding, the Debtors, after consultation with the Notice Parties, shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise bid (each, the “Leading Bid”);
- (h) Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Notice Parties), a Qualified Bidder submitting an Overbid must submit at the Debtors’ request (in consultation with the Notice Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Notice Parties) demonstrating such Qualified Bidder’s ability to close the transaction at the purchase price contemplated by such Overbid;
- (i) a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid from the previous round, which must include the Overbid;
- (j) except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Bidder), the Debtors may give effect to any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors;
- (k) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record;
- (l) all material terms of the bid that is deemed to be the highest or otherwise best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any questions that the Auction Bidders may have regarding the Debtors’ announcement of the then-current highest or otherwise best bid;

- (m) Subject to Paragraph 18 herein, the Debtors and their advisors, in consultation with the Notice Parties, may employ and announce at the Auction additional or amended procedural rules that are reasonable under the circumstances for conducting the Auction, *provided* that such potential additional modifications and/or procedural rules (i) are not materially inconsistent with existing terms and conditions of the Bidding Procedures Order and these Bidding Procedures, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any order of the Court entered in connection with the Chapter 11 Cases; and (ii) are disclosed to the Auction Bidders;
- (n) the Auction Bidders shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including, without limitation, all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- (o) a “Winning Bid” shall: (i) if the Auction for the Assets is cancelled because only the Stalking Horse Bid is submitted on or before the Bid Deadline, be the Stalking Horse Bid; or (ii) if the Auction is conducted, be the Qualified Bid(s) that the Debtors determine at the conclusion of the Auction, in consultation with the Notice Parties, and subject to Court approval, is or are the offer or offers for the relevant Assets that is or are the highest or otherwise best from among the Qualified Bids submitted at the Auction. In the case of (ii), in making this decision, the Debtors shall consider, in consultation with the Notice Parties, the amount of the purchase price, the assumption of liabilities (including, with respect to the R&D Assets, whether the Winning Bid assumes the Reedy Creek Royalty Agreement), the transaction structure, and execution risk, including, without limitation, the likelihood of the bidder’s ability to close a transaction and the timing thereof, the number, type, and nature of any changes to the Stalking Horse APA submitted with the Winning Bid, as applicable, requested by each bidder, the total consideration to the Debtors’ estates, and any other factors the Debtors may deem relevant. The bidder submitting the Winning Bid shall become the “Winning Bidder,” and shall have such rights and responsibilities of the purchaser as set forth in such Winning Bid, with all modifications made at the Auction. The Debtors may, in their business judgment and in consultation with the Notice Parties, designate the Back-Up Bid (and the corresponding Back-Up Bidder) to purchase the applicable Assets in the event that the applicable Winning Bidder does not close the Sale;
- (p) The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid or collection of Qualified Bids (each, a “Back-Up Bid”), as determined by the

Debtors in consultation with the Notice Parties will be required to serve as a back-up bidder (each, a “Back-Up Bidder”) and keep its bid open and irrevocable until the earlier to occur of (i) sixty (60) days after the Sale Hearing and (ii) closing on the Winning Bid with the Winning Bidder. The Stalking Horse Bidder shall not be required to serve as the Back-Up Bidder unless the Stalking Horse Bidder submits a Subsequent Bid at the Auction;

- (q) within one (1) business day of the selection of any Winning Bid(s), the Debtors shall file a notice with the Court (a “Notice of Winning Bid”) that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids;
- (r) in the event a Winning Bid or Back-Up Bid requires the assumption and assignment of any Assumed Contracts, then the Debtors shall comply with the Assumption and Assignment Procedures (as defined below);
- (s) within one (1) business day of the close of the Auction, any Winning Bidder and any Back-Up Bidder, except if the Winning Bidder or Back-Up Bidder is the Stalking Horse Bidder, shall supplement their respective Deposit, if necessary, such that the Deposit shall be equal to an amount that is ten (10%) percent of the purchase price set forth in the applicable Winning Bid and Back-Up Bid; and
- (t) prior to the Sale Hearing, any Winning Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Winning Bid was made.

**EACH QUALIFIED BID THAT IS NOT A WINNING BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.**

### **13. Sale Hearing and Winning Bid Objections**

The Debtors will seek entry of an order from the Court at a hearing (the “Sale Hearing”) to begin on **September 11, 2023 at 10:00 a.m. (ET)** to approve and authorize the Sale to the Winning Bidder (the “Sale Order”) and approval of the Back-Up Bid. Subject to the terms of the DIP Facility, the Stalking Horse APA, the Bidding Procedures Order and these Bidding Procedures, the Debtors reserve the right to change the date and/or time of the Sale Hearing (or any other dates related to the Sale) to achieve the maximum value for the Purchased Assets.

**Any objection relating solely to the conduct of the Auction, the Auction results, the selection of any Winning Bid or Back-Up Bid, or the terms of any Sale to a Winning Bidder or a Back-Up Bidder (each, a “Winning Bid Objection”), must be (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties on or before September 6, 2023, at 4:00 p.m. (ET).**



Any party who fails to file and serve a timely Initial Sale Objection or Winning Bid Objection shall be forever barred from asserting, at the Sale Hearing or thereafter, any Initial Sale Objection or Winning Bid Objection, including any such objection to the Bidding Procedures or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the applicable Winning Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to consent to such sale for purposes of section 363(f) of the Bankruptcy Code.

#### **14. Back-Up Bidder**

Notwithstanding any of the foregoing, in the event that a Winning Bidder fails to close a Sale on or before September 26, 2023, or such date as may be extended by the Debtors in consultation with the Notice Parties, and a Back-Up Bidder has been previously identified, the Debtors shall file a notice (the “Back-Up Bid Auction Notice”) and serve such Back-Up Bid Auction Notice on the U.S. Trustee, the Notice Parties, any Counterparties to Assumed Contracts subject to the Back-Up Bid, and those parties who filed a request to receive notice under Bankruptcy Rule 2002. Three (3) business days following the filing of any Back-Up Bid Auction Notice, the Back-Up Bid subject to such Back-Up Bid Auction Notice will be deemed to be the Winning Bid, the Back-Up Bidder will be deemed to be the Winning Bidder, and the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any other parties.

#### **15. Assumption and Assignment Procedures**

In the event a Winning Bid or Back-Up Bid provides for the assumption and assignment of Assumed Contracts, the Debtors shall follow following assumption and assignment procedures (the “Assumption and Assignment Procedures”) set forth in paragraph 20 of the Bidding Procedures Order.

#### **16. Return of Deposits**

All Deposits not used as part of the consummation of a Sale or not retained by the Debtors as part of damages shall be returned to each bidder not selected as a Winning Bidder no later than five (5) business days following the closing of the Sale. The Deposit of a Winning Bidder shall be applied to the purchase price for the Sale. If the Winning Bidder for a Sale fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Proposed APA, the Debtors and their estates shall be entitled to retain the Deposit of the Winning Bidder as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. For the avoidance of doubt, the Debtors’ retention of a Deposit shall not constitute a waiver of any of the Debtors’ legal or equitable rights relating to a Winning Bidder’s breach or failure to perform, and all such rights and remedies are preserved.

**17. Consultation Rights**

Any consultation rights provided to the Notice Parties by these Bidding Procedures shall not limit the Debtors' discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment. In the event that a member of the Creditors' Committee submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party, or their legal counsel, established under these Bidding Procedures will be waived without further action; *provided* that the bidding party will have the same rights as any other Qualified Bidder set forth herein.

Any failure to specifically identify consultation rights in any section of these Bidding Procedures shall not limit or otherwise impair the rights of the Notice Parties to consult with the Debtors. In the event that the Notice Parties disagree with matters for which the Debtors are required to consult with the Notice Parties, then the Notice Party shall have the right to seek relief from the Court on an expedited basis to resolve the dispute.

**18. Reservation of Rights**

Without prejudice to the rights of the DIP Lender under the DIP Facility or the rights of the Stalking Horse Bidder under the Stalking Horse APA, and except as otherwise provided in these Bidding Procedures, the Bidding Procedures Order or the Debtors' proposed form of Sale Order, the Debtors further reserve the right as they may reasonably determine to be in the best interest of their estates (in consultation with the Notice Parties), to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of these Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders other than the Stalking Horse Bidder; (f) modify these Bidding Procedures and/or implement additional procedural rules that the Debtors determine will better promote the goals of the bidding process; and (g) continue or cancel the Auction and/or Sale Hearing in open court without further notice or by filing a notice on the docket; provided, however, that none of the forgoing potential modifications and/or procedural rules shall be materially inconsistent with the existing terms of these Bidding Procedures and the Bidding Procedures Order without the consent of Ligand and the Creditors' Committee.

**Exhibit 2**

**Form of Auction Notice**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
Debtors. )  
 ) (Jointly Administered)  
 )  
\_\_\_\_\_ )

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION,  
SALE HEARING, AND OTHER DEADLINES RELATED HERETO**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On July 17, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [D.I. 16] (the “Bidding Procedures Motion”),<sup>2</sup> seeking entry of (a) an order (the “Bidding Procedures Order”): (i) approving bidding procedures (the “Bidding Procedures”) to be used in connection with one or more sales (each a “Sale”) of the Debtors’ assets (the “Assets”) free and clear of all liens, claims, interests, and encumbrances, (ii) authorizing the Debtors to designate Ligand Pharmaceuticals, Incorporated (“Ligand”) as the Stalking Horse Bidder for all of the Assets in connection with considering the entry of the Bidding Procedures Order, (iii) scheduling an auction of the Assets (the “Auction”); (iv) approving the form and manner of service of this Notice of Sale; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, “Assumed Contracts”) in connection with any Sale; (vi) approving the form and manner of service of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”) of the proposed assumption and assignment of such Counterparty’s Assumed Contract; (vii) scheduling a final hearing to consider approval of the proposed Sale(s) (the “Sale Hearing”); and (vi) granting related relief; and (b) one or more orders (each, a “Sale Order”) (i) authorizing a Sale of the Assets free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the approved Sale; and (iii) granting related relief.

On August 15, 2023, 2023, the Court entered the Bidding Procedures Order [D.I. [●]].

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings given to them in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Notice of Sale and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

## ASSETS FOR SALE

The Debtors intend to sell all, substantially all, or a portion of the Assets.

Any Qualified Bidder may submit a bid for the R&D Assets, the Commercial Assets, or all of the Assets, subject to the conditions set forth in the Bidding Procedures. The ability to undertake and consummate a Sale shall be subject to competitive bidding, as set forth herein and in the Bidding Procedures Order, and approval by the Court.

Any party interested in submitting a bid for any of the Debtors' Assets should contact (a) the Debtors' proposed investment banker, Raymond James & Associates (Geoffrey Richards ([geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)) and Simon Wein ([simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)); and (b) the Debtors' proposed counsel, Morris, Nichols, Arsht & Tunnell LLP.

## KEY DATES AND DEADLINES

### **A. Bid Deadline**

Any Qualified Bidder that intends to participate in the Auction must submit a Qualified Bid in accordance with Section 8 of the Bidding Procedures, on or before **August 28, 2023, at 5:00 p.m. (ET)** (the "Bid Deadline").

### **B. Auction**

If the Debtors timely receive one or more Qualified Bids other than the Stalking Horse Bid for any Assets, then the Debtors shall conduct one or more Auctions. If the Debtors do not receive more than one Qualified Bid other than the Stalking Horse Bid, the Debtors shall cancel the Auction(s) for the Assets, deem the Stalking Horse Bid as the Winning Bid for the Assets, and shall request at the Sale Hearing that the Court approve the Stalking Horse Bid and the transactions contemplated thereunder for the Assets.

The Auction, if required, will commence on **August 31, 2023, at 10:00 a.m. (ET)**, at the offices of proposed investment banker for the Debtors, Raymond James & Associates, Inc., 320 Park Avenue, Floor 12, New York, New York 10022, or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below). If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the Auction Participants via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time, or location of any Auction to the relevant Qualified Bidders, and will cause publication of such change to occur on the website of the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC.

Within one (1) business day of the selection of any Winning Bid(s), the Debtors shall file a Notice of Winning Bid with the Court that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids.

### C. Sale Objection Deadlines

- i. Initial Sale Objection Deadline. Objections to a Sale of the Assets, including any general objections to the Sale and objections to the Sale of any Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to the Stalking Horse Bidder, a Winning Bidder or a Back-Up Bidder, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on (i) the Debtors; (ii) proposed counsel to the Debtors; (iii) counsel to Ligand; and (iv) proposed counsel the Creditors' Committee (the "Objection Notice Parties") **on or before August 28, 2023, at 4:00 p.m. (ET).**
- ii. Winning Bid Objection Deadline. Any objection relating solely to the conduct of the Auction, the Auction results, the selection of any Winning Bid or Back-Up Bid, or the terms of any Sale to a Winning Bidder or a Back-Up Bidder, which could not have been raised by the Initial Sale Objection Deadline, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Objection Notice Parties on or before **September 6, 2023, at 4:00 p.m. (ET).**

### D. Sale Hearing

The Sale Hearing shall take place on **September 11, 2023, at 10:00 a.m. (ET)**, before The Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

### RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES

In accordance with and subject to the Bidding Procedures and the Bidding Procedures Order, and without prejudice to the rights of the DIP Lender under the DIP Facility or the Stalking Horse Bidder under the Stalking Horse APA, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, in consultation with the Notice Parties, shall have the right to modify the Bidding Procedures, including to (a) extend, modify, adjourn, or waive dates, deadlines or other terms and conditions set forth herein or in the Bidding Procedures; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are reasonably disclosed to Qualified Bidders; and (c) promote competitive bidding for and maximizing the value of the Assets; provided, however, that under no circumstance (i) shall any of the forgoing potential modifications and/or procedural rules be materially inconsistent with the existing terms of the Bidding Procedures Order or the Bidding Procedures without the consent of the Creditors' Committee and Ligand; or (ii) may a bid for the R&D Assets, other than the Stalking Horse Bid,

qualify as a Qualified Bidder if it does not provide for the unaltered assumption and assignment of the Royalty Agreement.

**ADDITIONAL INFORMATION**

Copies of the Bidding Procedures Motion, the Bidding Procedures, the Bidding Procedures Order, and all other documents filed with the Court may be obtained free of charge by visiting the Kurtzman Carson Consultants LLC Website, or can be requested by calling Kurtzman Carson Consultants LLC at: [ ] (Domestic) or [ ] (International).

**FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER, OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE ASSETS.**

**THE FAILURE OF ANY PERSON OR ENTITY TO TIMELY FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE, INCLUDING THE SALE OF ANY ASSETS TO A WINNING BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE OR THE TERMS OF ANY STALKING HORSE AGREEMENT OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.**

Dated:  
Wilmington, Delaware

Respectfully submitted,

*/s/ DRAFT*

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

Derek C. Abbott (No. 3376)

Daniel B. Butz (No. 4227)

Tamara K. Mann (No. 5643)

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[sjones@morrisnichols.com](mailto:sjones@morrisnichols.com)

*Proposed Counsel to the Debtors and  
Debtors in Possession*



**Exhibit 3**

**Form of Additional Assumption and Assignment Notice**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: )
) Chapter 11
NOVAN, INC., et al.,<sup>1</sup> )
) Ca Case No. 23-10937 (LSS)
Debtors. )
) (Jointly Administered)
) Objection Deadline: \_\_\_\_\_, 2023

NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

PLEASE TAKE NOTICE that, on July 17, 2023 (the "Petition Date"), the
above-captioned debtors and debtors in possession (collectively, the "Debtors") each filed a
voluntary petition for relief under chapter 11 of title 11 of the United States Code (the
"Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the
"Court"), commencing these chapter 11 cases (the "Chapter 11 Cases").

PLEASE TAKE FURTHER NOTICE that, on July 17, 2023, the Debtors filed
a motion [D.I. 16] (the "Bidding Procedures Motion") seeking entry of (a) an order (the "Bidding
Procedures Order"), (i) approving bidding procedures (the "Bidding Procedures") to be used in
connection with one or more sales (each a "Sale") of the Debtors' assets (the "Assets") free and
clear of all liens, claims, interests, and encumbrances, (ii) authorizing the Debtors to designate
one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee ("Ligand") as the
Stalking Horse Bidder for all of the Assets in connection with considering the entry of the
Bidding Procedures Order, (iii) scheduling an auction of the Assets (the "Auction");
(iv) approving the form and manner of service of this Notice of Sale; (v) approving procedures
for the assumption and assignment of executory contracts and unexpired leases (collectively,
"Assumed Contracts") in connection with any Sale; (vi) approving the form and manner of
service of notice to each relevant non-debtor counterparty to an Assumed Contract (each a
"Counterparty") of the proposed assumption and assignment of such Counterparty's Assumed
Contract; (vii) scheduling a final hearing to consider approval of the proposed Sale(s) (the "Sale
Hearing"); and (vi) granting related relief; and (b) one or more orders (each, a "Sale Order")
(i) authorizing a Sale of the Assets free and clear of all liens, claims, interests, and
encumbrances; (ii) authorizing the assumption and assignment of certain Assumed Contracts in
connection with the approved Sale; and (iii) granting related relief; and (b) one or more orders of
the Court (collectively, the "Sale Orders"):<sup>2</sup> (i) authorizing the sale of the Debtors' Assets free
and clear of all liens, claims, interests, and encumbrances, except as provided in the Sale Order;
(ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors' federal tax identification
number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and
the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> A copy of the proposed form of Sale Order(s) will be filed in advance of the Sale Hearing.

the Sale(s); and (iii) granting related relief; or (c) in the event the Bankruptcy Court does not enter the Bidding Procedures Order or the DIP Order on or before 25 calendar days after the Petition Date, a Sale Order, in the form attached hereto as Exhibit B (the “Private Sale Order”) (i) authorizing the sale to Ligand of the Debtors’ Assets free and clear of all liens, claims, interests, and encumbrances in accordance with the Stalking Horse Agreement (as defined below) attached to the Private Sale Order as Exhibit 1; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the Sale; and (iii) granting related relief.

**PLEASE TAKE FURTHER NOTICE** that, on August 15, 2023, the Court entered the Bidding Procedures Order [D.I. [●]], approving, among other things, the Bidding Procedures, which establish key dates and times relating to the Sale and the Auction. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.

**PLEASE TAKE FURTHER NOTICE** that, upon the closing of the Sale, including a potential Sale to Ligand pursuant to the proposed Private Sale Order, the Debtors intend to assume and assign to such purchaser (the “Purchaser”) certain executory contracts and unexpired leases (the “Assumed Contracts”). A schedule listing the contracts and leases that may potentially be assumed and assigned as part of the Sale is attached hereto as **Exhibit 1** (the “Contracts Schedule”) and may also be viewed free of charge on the Debtors’ case information website, located at [https://\[●\]](https://[●]), or can be requested by calling the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC.

**PLEASE TAKE FURTHER NOTICE** that Cure Amounts, if any, for the assumption and assignment of such contracts and leases are also set forth on the Contracts Schedule. Each Cure Amount listed on the Contracts Schedule represents all liabilities of any nature of the Debtors arising under a contract or lease prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF THE SALE.** *The presence of a contract or lease listed on Exhibit 1 attached hereto does not constitute an admission that such contract or lease is an executory contract or unexpired lease or that such contract or lease will be assumed and assigned as part of the Sale. The Debtors reserve all their rights, claims and causes of action with respect to the contracts and leases listed on Exhibit 1 attached hereto.*

### **Filing Objections**

Pursuant to the Assumption and Assignment Procedures, objections to the proposed assumption and assignment of a contract or lease on any basis (other than objections related solely to adequate assurance of future performance by a Winning Bidder other than the

Stalking Horse Bidder, if any), including, without limitation, on the basis (i) of adequate assurance of the Stalking Horse Bidder's future ability to perform; (ii) of the transfer of any related rights or benefits thereunder; (iii) that consent is allegedly required from any Counterparty for the assumption, assignment, and transfer of the Assumed Contract; (iv) relating to Cure Amounts, must (1)(a) be in writing; (b) state the basis for such objection; and (c) if such objection is to the Cure Amount, state with specificity what Cure Amount the counterparty believes is required (in all cases, with appropriate documentation in support thereof) and (2) be filed with the Court and served no later than [•], **2023 at 4:00 p.m. (ET)** on the following parties (collectively, the "Objection Notice Parties"): (a) counsel to the Debtors: [•]; (b) counsel to Ligand [•]; (c) counsel to the Creditors' Committee, [•]; (d) the Office of the U.S. Trustee for Region 3, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: [•]; [and (e) any Winning Bidders.]

If not the Stalking Horse Bidder, the Debtors shall file a notice identifying the Winning Bidder(s) and Backup Bidder(s) (if selected) (the "Notice of Winning Bidder") and shall serve the Notice of Winning Bidder on each counterparty to a potential Assumed Contract as soon as reasonably practicable after closing the Auction, if any. Each counterparty to a potential Assumed Contract will then have an opportunity to object to the identity of the Winning Bidder(s) (other than the Stalking Horse Bidder, if any) or adequate assurance of future performance with respect to such counterparty's contract or lease provided by the Winning Bidder(s), which must (i) be in writing, (ii) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (iii) state, with specificity, the legal and factual bases thereof, (iv) be filed with the Court by [•], **2023 at 4:00 p.m. (ET)** (the "Adequate Assurance Objection Deadline"), and (v) be served on the Objection Notice Parties.

The Court will hear and determine any objections to the assumption and assignment of the Assumed Contracts to the Purchaser at the Sale Hearing or at a later hearing, as determined by the Debtors. The Sale Hearing to consider the proposed Sale shall be held before the Honorable [•] on [•] (**prevailing Eastern Time**), or such other date as determined by the Court, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, [•] Floor, Courtroom No. [•], Wilmington, Delaware 19801.

### **Consequences of Failing to Timely Assert an Objection**

**UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE STALKING HORSE BIDDER, IF ANY, OR OTHERWISE WINNING BIDDER(S) THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1 AND (C) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT OR TRANSFER (INCLUDING THE TRANSFER OF ANY RELATED RIGHTS AND BENEFITS THEREUNDER) TO THE STALKING HORSE BIDDER OR WINNING BIDDER, AS APPLICABLE, OF THE YOUR CONTRACT OR LEASE AND**

**THE ADEQUACY OF ASSURANCE OF FUTURE PERFORMANCE THEREUNDER, AND BE FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING AGAINST THE DEBTORS OR THE STALKING HORSE BIDDER OR THE WINNING BIDDER, AS APPLICABLE, THAT ANY ADDITIONAL DEFAULTS EXIST OR THAT CONDITIONS TO ASSUMPTION, ASSIGNMENT, AND TRANSFER MUST BE SATISFIED UNDER YOUR CONTRACT OR LEASE (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE STALKING HORSE BIDDER OR WINNING BIDDER, AS APPLICABLE), OR THAT ANY RELATED RIGHT OR BENEFIT UNDER SUCH CONTRACT OR LEASE CANNOT AND WILL NOT BE AVAILABLE TO THE STALKING HORSE BIDDER OR THE WINNING BIDDER, AS APPLICABLE.**

**Obtaining Additional Information**

Copies of the Bidding Procedures Motion, the Bidding Procedures, the Bidding Procedures Order, the Stalking Horse Agreement, if any, and all other documents filed with the Court, are available free of charge on the Debtors’ case information website, located at [https:// \[•\]](https://[•]), or can be requested by calling the Debtors’ claims and noticing agent, [•].

Adequate assurance of future performance information for the Stalking Horse Bidder is available by contacting counsel to Ligand.

Dated:  
Wilmington, Delaware

Respectfully submitted,

*/s/ DRAFT*

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**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Exhibit 4**

**Initial Assumption and Assignment Notice (as Filed on July 25, 2023)**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
Debtors. ) (Jointly Administered)  
 )  
 ) **Objection Deadline: Aug. 8, 2023 at 4:00 p.m. (ET)**  
 )

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**INITIAL NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**PLEASE TAKE NOTICE** that, on July 17, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”), commencing these chapter 11 cases (the “Chapter 11 Cases”).

**PLEASE TAKE FURTHER NOTICE** that, on July 17, 2023, the Debtors filed a motion [D.I. 16] (the “Bidding Procedures Motion”) seeking entry of (a) an order (the “Bidding Procedures Order”): (i) approving bidding procedures to be used in connection with one or more sales (each a “Sale”) of the Debtors’ development and commercialization rights to their research and development portfolio (the “R&D Assets”) and to the rights to commercialize the Debtors’ commercial portfolio (the “Commercial Assets” and together with the R&D Assets, the “Assets,” as more fully defined in the Bidding Procedures) free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the Debtors to designate one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee (“Ligand”) as the Stalking Horse Bidder<sup>2</sup> for all of the Assets in connection with considering the entry of the Bidding Procedures Order; (iii) scheduling one or more auctions (each, an “Auction”), if necessary, and schedule one or more hearings to approve a sale of the Debtors’ Assets (a “Sale Hearing”); (iv) approving the form and manner of notice of the proposed Bidding Procedures, the Auction, and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the “Auction Notice”); (v) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Assumed Contracts”) in connection with any Sale (the “Assumption and Assignment Procedures”); (vi) approving the form and manner of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”), of (A) the Debtors’ calculation of the amount necessary to cure any default under the applicable Assumed Contract (the “Cure Amounts”); and (B) certain other information regarding the potential assumption and assignment of Assumed Contracts in connection with a Sale,

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the means ascribed to them in the Bidding Procedures Motion.

substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the “Assumption and Assignment Notice”); and (vii) granting related relief; and (b) one or more orders of the Court (collectively, the “Sale Orders”): (i) authorizing the sale of the Debtors’ Assets free and clear of all liens, claims, interests, and encumbrances, except as provided in the Sale Order; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the Sale(s); and (iii) granting related relief; or (c) in the event the Bidding Procedures Order or the DIP Order are not entered by the Court on or before 35 days after the Petition Date, a Sale Order (the “Private Sale Order”) (i) authorizing the sale to Ligand of the Debtors’ Assets free and clear of all liens, claims, interests, and encumbrances in accordance with the Stalking Horse Agreement; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the Sale; and (iii) granting related relief.

**PLEASE TAKE FURTHER NOTICE** that, at the hearing on first day relief held on July 19, 2023, the Court scheduled the Bidding Procedures Motion for a hearing on **August 4, 2023 at 1:00 p.m. (ET)**.

**PLEASE TAKE FURTHER NOTICE** that, (a) if the Court does not enter the Bidding Procedures Order at the hearing held on **August 4, 2023 at 1:00 p.m. (ET)**, the Debtors may sell the Assets to Ligand pursuant to the Private Sale Order **on or before August 16, 2023**; and (b) if the Court enters the Bidding Procedures Order at the hearing, the Debtors will seek one or more Sale Orders selling the Assets to a Winning Bidder **on or before September 8, 2023**; in each such instance, the Assumed Contracts may be included in such sales. A schedule listing the contracts and leases that may potentially be assumed and assigned as part of the sales is attached hereto as **Exhibit 1** (the “Contracts Schedule”) and may also be viewed free of charge on the Debtors’ case information website, located at <https://www.kccllc.net/Novan>, or can be requested by calling the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC at (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International).

**PLEASE TAKE FURTHER NOTICE** that Cure Amounts, if any, for the assumption and assignment of such contracts and leases are also set forth on the Contracts Schedule. Each Cure Amount listed on the Contracts Schedule represents all liabilities of any nature of the Debtors arising under a contract or lease prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF A SALE.** *The presence of a contract or lease listed on Exhibit 1 attached hereto does not constitute an admission that such contract or lease is an executory contract or unexpired lease or that such contract or lease will be assumed and assigned as part of a Sale. The Debtors reserve all their rights, claims and causes of action with respect to the contracts and leases listed on Exhibit 1 attached hereto.*



### Filing Objections

Pursuant to the proposed Assumption and Assignment Procedures, objections to the proposed assumption and assignment of a contract or lease on any basis (other than objections related solely to adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder, if any), including, without limitation, on the basis (i) of adequate assurance of the Stalking Horse Bidder's future ability to perform; (ii) of the transfer of any related rights or benefits thereunder; (iii) that consent is allegedly required from any Counterparty for the assumption, assignment, and transfer of the Assumed Contract; (iv) relating to Cure Amounts, must (1)(a) be in writing; (b) state the basis for such objection; and (c) if such objection is to the Cure Amount, state with specificity what Cure Amount the counterparty believes is required (in all cases, with appropriate documentation in support thereof) and (2) be filed with the Court and served no later than **August 8, 2023 at 4:00 p.m. (ET)** on the following parties (collectively, the "Objection Notice Parties"): (a) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16th Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. ([dabbott@morrisnichols.com](mailto:dabbott@morrisnichols.com))); (b) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801 (Attn: Linda J. Casey, Esq. ([linda.casey@usdoj.gov](mailto:linda.casey@usdoj.gov))); (c) counsel to Ligand, Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Craig A. Wolfe, Esq. ([craig.wolfe@morganlewis.com](mailto:craig.wolfe@morganlewis.com)), Jason A. Alderson ([Jason.alderson@morganlewis.com](mailto:Jason.alderson@morganlewis.com)), and David K. Shim ([David.shim@morganlewis.com](mailto:David.shim@morganlewis.com))); and (d) counsel to any statutory committee appointed in these Chapter 11 Cases.

### Consequences of Failing to Timely Assert an Objection

**UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE STALKING HORSE BIDDER, IF ANY, OR OTHERWISE SUCCESSFUL BIDDER(S) THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1 AND (C) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT OR TRANSFER (INCLUDING THE TRANSFER OF ANY RELATED RIGHTS AND BENEFITS THEREUNDER) TO THE STALKING HORSE BIDDER OR SUCCESSFUL BIDDER, AS APPLICABLE, OF THE YOUR CONTRACT OR LEASE AND THE ADEQUACY OF ASSURANCE OF FUTURE PERFORMANCE THEREUNDER, AND BE FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING AGAINST THE DEBTORS OR THE STALKING HORSE BIDDER OR THE SUCCESSFUL BIDDER, AS APPLICABLE, THAT ANY ADDITIONAL DEFAULTS EXIST OR THAT CONDITIONS TO ASSUMPTION, ASSIGNMENT, AND TRANSFER MUST BE SATISFIED UNDER YOUR CONTRACT OR LEASE (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE STALKING HORSE BIDDER OR WINNING BIDDER, AS APPLICABLE), OR THAT ANY RELATED RIGHT OR**

**BENEFIT UNDER SUCH CONTRACT OR LEASE CANNOT AND WILL NOT BE AVAILABLE TO THE STALKING HORSE BIDDER OR THE SUCCESSFUL BIDDER, AS APPLICABLE.**

**Obtaining Additional Information**

Copies of the Bidding Procedures Motion, the Bidding Procedures, the proposed Bidding Procedures Order, the Stalking Horse Agreement, if any, and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <https://www.kccllc.net/Novan>, or can be requested by calling the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC at (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International).

Adequate assurance of future performance information for the Stalking Horse Bidder is available by contacting counsel to Ligand.

Dated: July 25, 2023  
Wilmington, Delaware

Respectfully submitted,

*/s/ Daniel B. Butz*

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT 1**  
Contracts Schedule

## Exhibit 1: Contract Schedule

ID #	Contract Counterparty	Debtor Name	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
1	[Written in French]-Onxeo S.A., fka BioAlliance Pharma S.A.	EPI Health, LLC	Sitavig MAH Transfer from Onxeo to Vectans 26.12.2017	12/26/2017	-
2	A Menarini Industrie Farmaceutiche Riunite Srl	Novan, Inc.	Menarini_Mutual NDA_FE_11Apr2022	4/11/2022	-
3	AARON STANNARD	Novan, Inc.	Stannard_AM_Mutual NDA_FE_29Jul2021	7/29/2021	-
4	Aatman Shah	Novan, Inc.	Aatman Shah_MCSA_FE	3/14/2023	-
5	Accentuate Staffing Inc.	Novan, Inc.	Accentuate Staffing_SOW Katie Thorson_FE_14Oct2019	10/3/2019	-
6	Aclaris Therapeutics, Inc.	EPI Health, LLC	Asset Purchase Agreement by and between Aclaris Therapeutics, Inc. and EPI Health, LLC	10/10/2019	1,129,502
7	Aclaris Therapeutics, Inc. & Allergan Sales, LLC	EPI Health, LLC	Asset Purchase Agreement by and between Aclaris Therapeutics, Inc. and Allergan Sales, LLC	10/15/2018	124,671
8	Aclaris Therapeutics, Inc. & Allergan Sales, LLC	EPI Health, LLC	Seller Disclosures to the Asset Purchase Agreement between Aclaris Therapeutics, Inc. and Allergan Sales LLC	10/15/2018	-
9	Aclaris Therapeutics, Inc. & Allergan Sales, LLC	EPI Health, LLC	Transition Services Agreement between Aclaris Therapeutics, Inc. and Allergan Sales, LLC	11/30/2018	-
10	Aclaris Therapeutics, Inc. & Allergan Sales, LLC	EPI Health, LLC	First Amendment of Transition Services Agreement by and between Aclaris Therapeutics, Inc. and Allergan Sales LLC	5/23/2019	-
11	Aclaris Therapeutics, Inc. & PPD Development	EPI Health, LLC	Notice of Termination by Aclaris Therapeutics	1/27/2020	-
12	Acousti Engineering Company	Novan, Inc.	Acousti Engineering_Service Order_FE_25Jul2019	7/8/2019	-
13	Actalent Services, LLC	Novan, Inc.	Actalent_SOW_QA Manager_FE_16Feb2023	2/16/2023	-
14	Actalent Services, LLC	Novan, Inc.	Actalent Scientific_Services Agreement_FE_11Oct2021	10/5/2021	-
15	Actalent Services, LLC	Novan, Inc.	Actalent_Exhibit A_Steven Jones_FE_14Apr2022	4/14/2022	-
16	Actalent Services, LLC	Novan, Inc.	Actalent Services_MSA_FE_17Nov2021	11/17/2021	81,560
17	Adelaide Hebert	Novan, Inc.	Hebert_Adelaide_CSA_FE_1Feb2023	2/1/2023	-
18	Adelaide Hebert	Novan, Inc.	Adelaide Hebert, Md_MCSA_FE	2/24/2023	-
19	Advanced Dermatology & Dermatologic Surgery, Inc.	Novan, Inc.	Kory_Mark_AdBoard Agreement_Fall Clinical_FE_12Oct2022	10/22/2022	-
20	Advanced Process Solutions, Inc	Novan, Inc.	APS_AIA B104_FE_10Mar2021	11/16/2020	-
21	Advanced Process Solutions, Inc	Novan, Inc.	APS_P21.1315 Pilot P&ID Development_FE_20Jul2021	6/11/2021	-
22	Advanced Process Solutions, Inc	Novan, Inc.	Advanced Process Solutions_Proposal_FE_12Mar2021	3/12/2021	-
23	Advanced Recruiting Partners, LLC	Novan, Inc.	Advanced Recruiting Partners_Rate Agreement_FE_22Mar2023	3/7/2023	10,133
24	Advanced Recruiting Partners, LLC	Novan, Inc.	Advanced Recruiting Partners_DH Agreement_FE_11Jun2021	6/11/2021	-
25	Advanced Recruiting Partners, LLC	Novan, Inc.	Advanced Recruiting Partners_Fee Agreement_FE_7Mar2023	3/7/2023	-
26	Advanced Recruiting Partners, LLC	Novan, Inc.	Advanced Recruiting Partners_SA_FE_18Feb2019	2/18/2019	-
27	Advanced Recruiting Partners, LLC	Novan, Inc.	ARP_Gantner_Patricia_Rate Agreement_FE_29Aug2019	8/29/2019	-
28	Advances in Cosmetic and Medical Dermatology	Novan, Inc.	Derm Summit Sponsorship_Sponsorship Agreement_30Sept2019	9/30/2019	-
29	Advarra Consulting, Inc.	Novan, Inc.	Advarra Consulting_MSA_FE_3May2019	4/22/2019	-
30	Advarra Consulting, Inc.	Novan, Inc.	Advarra_MSA_FE_6Nov2019	9/12/2019	-
31	Advarra Consulting, Inc.	Novan, Inc.	Advarra_SOW1_FE_5Jun2019	5/21/2019	-
32	Ahmed Hawash	Novan, Inc.	Ahmed Hawash_MCSA_FE	3/14/2023	-
33	Ahuva Cices	Novan, Inc.	Ahuva Cices_MCSA_FE	3/14/2023	-
34	Airgas USA, L.L.C.	Novan, Inc.	Airgas_Am1 Reinstatement_Mutual NDA_FE_3Aug2021	8/3/2021	9,008
35	Airgas USA, L.L.C.	Novan, Inc.	Airgas_Rider_FE_3Mar2022	2/1/2022	-
36	AIT Bioscience	Novan, Inc.	AITB_5414_Method Development and Validation for the Quantitation of hMAP3 in K2EDTA Dog Plasma_FE_21Jan2021	3/31/2021	-
37	AIT Bioscience	Novan, Inc.	AITB_CO1_storage hMAP3 Mouse Plasma_PE_26Aug2021	8/19/2021	-
38	AIT Bioscience	Novan, Inc.	AITB_CO1 0174-2332_FE_11Apr2019	4/12/2019	-
39	AIT Bioscience	Novan, Inc.	AITB_CO1_2018 Guidance Method Update for hMAP3 in K2EDTA Human Plasma_FE_16Sept2019	9/11/2019	-
40	AIT Bioscience	Novan, Inc.	AITB_CO3_Nitrate Method Validation Expansion_FE_16Aug2019	8/15/2019	-
41	AIT Bioscience	Novan, Inc.	AITB_SOW hMAP3 and Nitrate in Rat Plasma_FE_21Jun2019	6/7/2019	-
42	AIT Bioscience	Novan, Inc.	AITB_SOW_hMAP3 and Nitrate in Human Plasma_FE_6Aug2019	7/31/2019	-

## Exhibit 1: Contract Schedule

ID #	Contract Counterparty	Debtor Name	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
43	AIT Bioscience	Novan, Inc.	AITB_SOW_hMAP3 and Nitrate in Minipig Plasma_FE_28May2019	5/22/2019	-
44	AIT Bioscience	Novan, Inc.	AITB_SOW_hMAP3 and Nitrate in Mouse Plasma_FE_6Aug2019	7/30/2019	-
45	AIT Bioscience	Novan, Inc.	AITB_SOW_Method Update Mouse hMAP3 and Mouse Rat Minipig and Human Nitrate_FE_31May2019	5/22/2019	-
46	AIT Bioscience	Novan, Inc.	AITB_SOW_Method Update_FE_28May2019	5/22/2019	-
47	Alcami Corporation	Novan, Inc.	Alcami Corporation_Mutual NDA_FE_21Jun2021	6/18/2021	-
48	Allegro Biopharma Associates, LLC	Novan, Inc.	Allegro Biopharma_CSA_FE_2Jun2023	6/2/2023	17,355
49	Allergan, Inc. & Erythema Acquisition, Inc. & Viecept Therapeutics, Inc. & Neal Walker	EPI Health, LLC	Agreement and Plan of Merger by and among Allergan, Inc., Erythema Acquisition, Inc., Viecept Therapeutics, Inc., and Neal Walker	7/18/2011	-
50	Allied World Insurance Company	Novan, Inc.	Allied World Assurance Co., US, Inc.	7/21/2020	-
51	Almac Group Limited	Novan, Inc.	Almac Group Limited	12/14/2020	-
52	Almirall S.A.	Novan, Inc.	Almirall_Mutual NDA_FE_6Jul2022	6/7/2022	-
53	Alphanumeric Systems, Inc.	Novan, Inc.	Alphanumeric Systems_Quote TP002578_FE_21Mar2022	3/18/2022	-
54	Alta Vetta Pharmaceutical Consulting, LLC	Novan, Inc.	Alta Vetta_Mutual NDA_FE_28Jul2021	7/23/2021	-
55	Alta Vetta Pharmaceutical Consulting, LLC	Novan, Inc.	Alta Vetta_CSA_FE_23Aug2021	8/13/2021	-
56	Altadore Investments, LLC	Novan, Inc.	Altadore_Mutual NDA_FE_19Jan2022	1/19/2021	-
57	Altasciences Preclinical Seattle, LLC	Novan, Inc.	Altasciences_Mutual NDA_FE_17May2023	5/17/2023	-
58	Amerisource Funding, Inc.	Novan, Inc.	Amerisource_NDA_FE_29Sept2022	9/29/2022	-
59	AMPAC Fine Chemicals LLC	Novan, Inc.	AMPAC_Mutual NDA_FE_11Aug2022	8/11/2022	-
60	AMPAC Fine Chemicals LLC	Novan, Inc.	AMPAC_MTA_FE_2Sept2022	9/2/2022	-
61	AmWINS	Novan, Inc.	Amwins_Mutual NDA_FE_16Aug2021	8/16/2021	-
62	Amy Huang	Novan, Inc.	Amy Huang_MCSA_FE	3/14/2023	-
63	Anthony T Cacek	Novan, Inc.	Cacek_Tim_SOW1_FE_8Jul2021	6/30/2021	-
64	Aon Consulting, Inc.	Novan, Inc.	Aon_SOW_1_FE_18Jan2022	1/5/2022	-
65	Aon Consulting, Inc.	Novan, Inc.	Aon_Services Agreement_FE_18Jan2022	1/18/2022	-
66	Aon Consulting, Inc.	Novan, Inc.	Aon Consulting_SOW_FE_3Feb2023	1/20/2023	-
67	APCER Life Sciences, Inc.	Novan, Inc.	APCER Life Sciences_Mutual NDA_FE_25Jun2021	6/22/2021	-
68	Applied Technical Services	Novan, Inc.	Applied Technical Services_Mutual NDA_FE_19Jan2022	1/19/2022	-
69	Apps Associates	EPI Health, LLC	MSA & SOW	TBD	-
70	Apps Associates LLC	Novan, Inc.	Apps Associates_MSA_FE_15May2022	5/15/2022	-
71	AptarGroup, Inc.	Novan, Inc.	Aptar_Shine Advisor_3-way NDA_FE_8Feb2022	2/8/2022	-
72	Argo Group US, Inc.	Novan, Inc.	Argo_Mutual NDA_FE_16Aug2021	8/12/2021	-
73	ARL Bio Pharma, Inc.	Novan, Inc.	ARL Bio Pharma_Mutual NDA_FE_10Feb2023	2/10/2023	-
74	Armstrong Relocation Co, Inc - Raleigh	Novan, Inc.	Armstrong Commercial Services_Proposal_FE_9Mar2021	2/8/2021	20,933
75	Arthur J. Gallagher Broker & Risk Management Services, LLC	Novan, Inc.	AJ Gallagher_Broker Letter_FE_10Aug2022	8/10/2022	-
76	Ascent Health Services	EPI Health, LLC	Fourth Amendment to the Amended and Restated Rebate Program Agreement by and between Ascent Health	1/1/2014	2,325,835
77	Ascent Health Services	EPI Health, LLC	Amended and Restated Rebate Program Agreement by and between Ascent Health Services LLC	1/1/2022	-
78	Ascent Health Services	EPI Health, LLC	Fourth Amendment to the Rebate Program Agreement by and between Ascent Health Services LLC	7/1/2021	-
79	Ascent Health Services	EPI Health, LLC	Third Amendment to the Rebate Program Agreement by and between Ascent Health Services LLC	5/1/2021	-
80	Ascent Health Services	EPI Health, LLC	Rebate Program Agreement by and between Ascent Health Services LLC and EPI Health	1/1/2020	-
81	Ashfield Market Access, LLC	EPI Health, LLC	MSA/SOWs	TBD	90,113
82	Astrix Technology, LLC	Novan, Inc.	Astrix_Direct Hire Agreement_FE_24Feb2021	2/24/2021	-
83	Austin Chemical Company, Inc.	Novan, Inc.	Austin Chemicals_Mutual NDA_FE_23Aug2021	7/1/2021	15,000
84	AVIR Pharma Inc.	Novan, Inc.	Avir Pharma_Mutual NDA_FE_27Jul2022	7/27/2022	-
85	Avista Pharma Solutions	Novan, Inc.	Avista_SOW19_FE_10Oct2019	8/22/2019	-
86	Avista Pharma Solutions	Novan, Inc.	Avista_SOW22_FE_28Oct2019	10/16/2019	-
87	Avista Pharma Solutions	Novan, Inc.	Avista Pharma_MSA Am3 Reinstatement_FE_29Oct2021	4/22/2021	-
88	Avista Pharma Solutions	Novan, Inc.	CONTRACT	2/27/2023	-
89	Avista Pharma Solutions	Novan, Inc.	Avista_Cambrex_SOW28_FE_27Feb2023	2/27/2023	-
90	Avomeen LLC	Novan, Inc.	Avomeen_Proposal 21-90325_FE_9Nov2021	10/13/2021	-
91	Avomeen LLC	Novan, Inc.	Avomeen_MSA Am2 Rein_FE_10Dec2021	9/8/2021	-
92	Avomeen LLC	Novan, Inc.	Avomeen_Proposal 19-72313_FE_10Oct2019	10/1/2019	-
93	AXIS Insurance Company	Novan, Inc.	Axis Insurance_One Way NDA_FE_16Aug2021	8/1/2021	-

## Exhibit 1: Contract Schedule

ID #	Contract Counterparty	Debtor Name	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
94	AZTherapies, Inc.	Novan, Inc.	AZTherapies_Mutual NDA_FE_22Jan2020	1/22/2020	-
95	Azzur Group, LLC	Novan, Inc.	Azzur Group_Mutual NDA_FE_23Feb2023	2/23/2023	-
96	Bank of America, N.A.	Novan, Inc.	Bank of America_NDA_FE_26Sept2022	9/26/2022	-
97	Barnette Consulting, L.L.C.	Novan, Inc.	Barnette_Deborah_SOW1_FE_31Jul2019	7/18/2019	-
98	Barry Wehmiller Design Group	Novan, Inc.	Barry Wehmiller Design_Mutual NDA_FE_19Oct2021	10/19/2021	66,560
99	Barry Wehmiller Design Group	Novan, Inc.	Barry Wehmiller Design Group_MSA_FE_15Feb2023	2/15/2023	-
100	Barry Wehmiller Design Group	Novan, Inc.	Barry Wehmiller Design Group_SOW1_FE_15Feb2023	2/15/2023	-
101	Bay View Funding	Novan, Inc.	BVF_NDA_FE_27Sept2022	9/27/2022	-
102	Bayer Healthcare LLC	EPI Health, LLC	OTC Switch License Agreement between EPI Health, LLC and Bayer Healthcare LLC	2/21/2020	-
103	Bayron Cleaning Services LLC	Novan, Inc.	Bayron Cleaning Services_MSA_FE_3Mar2022	2/17/2022	9,500
104	Bayron Cleaning Services LLC	Novan, Inc.	Bayron Cleaning Services_SOW_1_FE_11Apr2022	3/7/2022	-
105	Bayron Cleaning Services LLC	Novan, Inc.	Bayron Cleaning Services_SOW2_FE_25Aug2022	8/25/2022	-
106	BCI Management and Communications, LLC	EPI Health, LLC	MSA	TBD	-
107	Beach Point Capital Management LP	Novan, Inc.	Beach Point_Mutual NDA_FE_6Jul2023	7/6/2023	-
108	Bio Business Consultants	Novan, Inc.	Bio Business Consultants_Mutual NDA_FE_31Jul2020	7/31/2020	-
109	BioAgilytix Labs LLC	Novan, Inc.	BioAgilytix_Mutual NDA_draft_14Oct2021	10/14/2021	-
110	BioAlliance Pharma, S.A. & Innocutis Holdings, LLC	EPI Health, LLC	License and Commercialization Agreement between BioAlliance Pharma SA and Innocutis Holdings LLC	3/17/2014	-
111	BioAlliance Pharma, S.A. & Innocutis Holdings, LLC	EPI Health, LLC	Supply Agreement between BioAlliance Pharma SA and Innocutis Holdings LLC,	3/17/2014	-
112	BioPharmaPotentials LLC	Novan, Inc.	BioPharmaPotentials_Mutual NDA_FE_30Jul2020	7/29/2020	-
113	BMD Scientific, LLC	Novan, Inc.	BMD Scientific_Recruiter Fee Agreement_FE_2Feb2022	2/2/2022	-
114	BOCSCI Inc.	Novan, Inc.	BocSci_Mutual NDA_FE_7Jun2023	6/7/2023	-
115	Boni Elewski Hoover	Novan, Inc.	Boni Elewski Hoover_MCSA_FE	3/14/2023	-
116	Boston Analytical, Inc.	Novan, Inc.	Boston Analytical	11/14/2022	-
117	Botanix Pharmaceuticals Ltd.	Novan, Inc.	Botanix_Mutual NDA_FE_29Nov2022	12/2/2022	-
118	Brady Trane Service, Inc.	Novan, Inc.	Brady Trane Service_Service Agreement_FE_3Mar2022	4/1/2022	17,820
119	Brand Institute, Inc.	Novan, Inc.	Brand Institute_Brand Name Testing Proposal_FE_27Aug2019	8/27/2019	-
120	Brand Institute, Inc.	Novan, Inc.	Brand Institute_Refreshed Research SB206_FE_25Jan2023	1/25/2023	-
121	Brickell Biotech Inc.	Novan, Inc.	Brickell Biotech_Mutual NDA_FE_7Jul2021	7/7/2021	-
122	BridgeBio Pharma, Inc.	Novan, Inc.	BridgeBio_Mutual NDA_FE_6Apr2022	4/6/2022	-
123	Budget Blinds of Durham	Novan, Inc.	Budget Blinds_WO_FE_7May2021	5/7/2021	-
124	Business Ready Solutions, LLC	Novan, Inc.	Business Ready Solutions	12/14/2022	3,646
125	Business Ready Solutions, LLC	Novan, Inc.	Business Ready Solutions_Order Form_FE_1May2023	5/1/2023	-
126	Caerus Marketing Group, LLC	Novan, Inc.	CMG_StudyKIK_MSA_FE_1Mar2019	2/20/2019	-
127	Caerus Marketing Group, LLC	Novan, Inc.	CMG_StudyKIK_SOW301_FE_12Apr2019	4/15/2019	-
128	Caerus Marketing Group, LLC	Novan, Inc.	CMG_StudyKIK_SOW302_FE_12Apr2019	4/15/2019	-
129	CallTower, Inc.	Novan, Inc.	CallTower_Proposal_FE_1Mar2021	2/26/2021	-
130	Canfield Scientific, Inc.	Novan, Inc.	Canfield Scientific_WO 4_FE_	7/6/2020	-
131	Canfield Scientific, Inc.	Novan, Inc.	Canfield_WOAm_FE_3Nov2020	11/3/2020	-
132	Canopius Underwriting Agency, Inc. dba Canopius Insurance Services	Novan, Inc.	Canopius_Mutual NDA_FE_22Jul2020	7/22/2020	-
133	Cantor Fitzgerald & Co.	Novan, Inc.	Cantor_NDA_FE_22Mar2021	3/22/2021	-
134	CaremarkPCS Health LLC	EPI Health, LLC	Rebate Agreement by and between CaremarkPCS Health LLC and EPI Health	1/1/2020	5,073,421
135	CaremarkPCS Health LLC	EPI Health, LLC	First Amendment to the Rebate Agreement by and between CaremarkPCS Health, LLC and EPI Health	2/1/2020	-
136	CaremarkPCS Health LLC	EPI Health, LLC	Second Amendment to the Rebate Agreement by and between CaremarkPCS Health, LLC and EPI Health	1/1/2021	-
137	CaremarkPCS Health LLC	EPI Health, LLC	Third Amendment to the Rebate Agreement by and between CaremarkPCS Health, LLC and EPI Health	4/1/2021	-
138	CaremarkPCS Health LLC	EPI Health, LLC	Fourth Amendment to the Rebate Agreement by and between CaremarkPCS Health, LLC and EPI Health	1/1/2022	-
139	Carolina Livery	Novan, Inc.	Carolina Livery_Service Agreement_Christmas Party_FE_29Oct2019	11/6/2019	-
140	Catalent CTS (Kansas City), LLC	Novan, Inc.	CTS_Mutual NDA_FE_19Jan2022	1/19/2022	-
141	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_QTE-9144450_Extractables Characterization of Aluminum Tube and Cap_FE_25SEP2019	9/18/2019	22,004
142	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_QAR_QTE-9190786_FE_18Jun2021	6/15/2020	-
143	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_SOW 9208973_FE_30Aug2022	8/30/2022	-
144	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_QTE-9219576_FE_27Sept2022	9/27/2022	-

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ID #	Contract Counterparty	Debtor Name	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
145	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_Quote_Microscopy_FE_23Sept2022	8/25/2022	-
146	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_SOW 9174845_FE_18May2022	5/16/2022	-
147	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_SOW 9194167_FE_17May2022	5/3/2022	-
148	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_QAR2_QTE-9174844_Additional Analysis of GLP Test Article_FE_26Aug2021	12/15/2020	-
149	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_Quotation 9174844_FE_15Dec2020	12/15/2020	-
150	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_QTE-9202127v2_FE_10Dec2021	11/24/2021	-
151	Catalent Pharma Solutions - RTP	Novan, Inc.	Catalent_Quotation 9145101_FE_7Sept2021	9/2/2021	-
152	Catapult Employers Association, Inc.	Novan, Inc.	Catapult_Recruiting Agreement_FE_22Sept2021	9/15/2021	-
153	Catherine Motosko	Novan, Inc.	Catherine Motosko_MCSA_FE	3/14/2023	-
154	CCL Label Inc.	Novan, Inc.	CCL Label_Mutual NDA_FE_2Sept2021	9/2/2021	-
155	Certara USA, Inc.	Novan, Inc.	Certara_WO1 Toxicology_FE_30May2023	5/30/2023	9,118
156	Certara USA, Inc.	Novan, Inc.	Certara_MSA_FE_25Apr2023	4/25/2023	-
157	Charles River	Novan, Inc.	Charles River Labs_SOW Am1_00293507_Cardiovascular Radiotelemetry Minipigs_FE_27Sept2019	9/16/2019	1,080
158	Charles River	Novan, Inc.	Charles River Labs_SOW Am1_00293508_CNS Rats_FE_27Sept2019	9/25/2019	-
159	Charles River	Novan, Inc.	Charles River Labs_SOW Am1_00293509_Respiratory Rats_FE_27Sept2019	9/25/2019	-
160	Charles River	Novan, Inc.	Charles River Labs_SOW_Am1_Gastrointestinal Mouse_FE_2Aug2019.	7/29/2019	-
161	Charles River	Novan, Inc.	Charles River Labs_SOW_Gastrointestinal study in Mice_FE_11Jul2019	7/9/2019	-
162	Charles River	Novan, Inc.	Charles River_Novan Safety Pharm and hERG Studies SOW_FE_18Jul2019	7/9/2019	-
163	Charles River	Novan, Inc.	Charles River_SOW_Am 1_Minipigs_FE_8Aug2019	8/6/2019	-
164	Charles River	Novan, Inc.	Charles River_SOW_Am 1_Rats_FE_8Aug2019	8/6/2019	-
165	Charles River	Novan, Inc.	Charles River_SOW_OPP-136050 V4_FE_7May2019	5/6/2019	-
166	Charles River	Novan, Inc.	Charles River_SOW 2 Am_DSS Induced Colitis in Mice_FE_20Dec2019	12/19/2019	-
167	Charles River	Novan, Inc.	Charles River_Proposal 20302618_FE_17Mar2021	10/6/2021	-
168	Charles River	Novan, Inc.	Charles River Labs_SOW_ManualPatch GLP hERG_FE_11Jan2021	12/10/2020	-
169	Charles River	Novan, Inc.	Charles River Labs_Am SOW 2_00293509_FE_30Jun2020	6/30/2020	-
170	Charles River	Novan, Inc.	Charles River Labs_Am SOW 2_FE_30Jun2020	6/30/2020	-
171	Charles River	Novan, Inc.	Charles River_SOW Shipment_FE_18Apr2023	3/19/2020	-
172	Charles River	Novan, Inc.	Charles River_Storage of Study Materials 2022_FE_12Jul2022	4/14/2023	-
173	Charles River	Novan, Inc.	Charles River Lab_Mutual NDA_FE_12May2023	5/12/2023	-
174	Chemische Fabrik Karl Bucher GmbH	Novan, Inc.	Chemische Fabrik Karl Bucher_Mutual NDA_FE_1Jul2021	7/1/2021	-
175	Chesson Laboratory Associates, Inc.	EPI Health, LLC	First Amendment to Exclusive Licensure Agreement by and between Chesson Laboratory Associates, Inc. and Innocutis Holdings, LLC	1/8/2014	-
176	Chesson Laboratory Associates, Inc.	EPI Health, LLC	Settlement Agreement and Fourth Amendment to License Agreement, by and between Chesson Laboratory Associates, Inc. and EPI Health, LLC (successor in interest to Cipher Pharmaceuticals US, LLC)	1/30/2019	-
177	Chesson Laboratory Associates, Inc.	EPI Health, LLC	Fifth Amendment to License Agreement by and between Chesson Laboratory Associates, Inc. and EPI Health	5/16/2019	-
178	Chesson Laboratory Associates, Inc.	EPI Health, LLC	First Amendment to Supply Agreement by and between Chesson Laboratory Associates, Inc. and EPI Health LLC	1/30/2019	-
179	Chesson Laboratory Associates, Inc.	EPI Health, LLC	Consent to Supply Agreement for Nuvail, dated November 28, 2017.	11/28/2017	-
180	Chesson Laboratory Associates, Inc. & Cipher Pharmaceuticals US LLC	EPI Health, LLC	Third Amendment to Exclusive Licensure Agreement by and between Chesson Laboratory Associates, Inc. and Innocutis Holdings, LLC	4/28/2017	-
181	Chesson Laboratory Associates, Inc. & Innocutis Holdings, LLC	EPI Health, LLC	Exclusive License Agreement by and between Chesson Laboratory Associates, Inc., and Innocutis Holdings	11/7/2011	-
182	Chesson Laboratory Associates, Inc. & Innocutis Holdings, LLC	EPI Health, LLC	Second Amendment to Exclusive Licensure Agreement by and between Chesson Laboratory Associates, Inc. and Innocutis Holdings, LLC	10/23/2014	-

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ID #	Contract Counterparty	Debtor Name	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
183	Chesson Laboratory Associates, Inc. & Innocutis Holdings, LLC	EPI Health, LLC	Supply Agreement (for Nuvail) by and between Chesson Laboratory Associates, Inc., and Innocutis Holdings LLC	10/15/2014	-
184	Chesson Laboratory Associates, Inc. & Innocutis Holdings, LLC	EPI Health, LLC	Supplier Quality Agreement by and between Chesson Laboratory Associates, Inc. and Innocutis Holdings	10/15/2014	-
185	Christopher G. Bunick	Novan, Inc.	Christopher Gerard Bunick_MCSA_FE	3/14/2023	-
186	Christy Jeffries Crump	Novan, Inc.	Crump_Christy Jeffries_Confidentiality-Assignment Inventions_FE_23Apr2019	5/1/2019	-
187	Chubb Bermuda Insurance Ltd.	Novan, Inc.	Chubb Bermuda Insurance Ltd.	8/16/2021	-
188	Cilatus BioPharma AG	Novan, Inc.	Cilatus_SOW6_FE_2Aug2021	7/30/2021	13,540
189	Cilatus BioPharma AG	Novan, Inc.	Cilatus_MCSA_Am2_FE_10Aug2021	8/1/2021	-
190	Cipher Pharmaceuticals US LLC & Onxeo S.A.	EPI Health, LLC	Amendment No. 1 to each of the License and Commercialization Agreement and Supply Agreement	4/27/2017	-
191	Civil Consultants, Inc.	Novan, Inc.	Civil Consultants_Mutual NDA_FE_18Dec2021	12/18/2020	-
192	Clarkston-Potomac Group, Inc.	Novan, Inc.	Clarkston Consulting_Mutual NDA_FE_9Mar2022	3/9/2022	410,050
193	Clarkston-Potomac Group, Inc.	Novan, Inc.	Clarkston_SOW 22-02_FE_18Oct2022	10/10/2022	-
194	Clarkston-Potomac Group, Inc.	Novan, Inc.	Clarkston Consulting_MSA_FE_14Apr2022	4/5/2022	-
195	CliftonLarsonAllen LLP	Novan, Inc.	CliftonLarsonAllen_SOW2_FE_22Jan2019	1/21/2019	-
196	Clinfinity, LLC	Novan, Inc.	Clinfinity_SOW5_FE_24Sept2019	9/16/2019	-
197	Clinfinity, LLC	Novan, Inc.	Clinfinity_SOW 8_FE_15Nov2021	11/12/2021	-
198	Clinfinity, LLC	Novan, Inc.	Clinfinity_MSA Am1 Rein_FE_15Nov2021	11/12/2021	-
199	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_WO 22-126_FE_2Feb2022	2/2/2022	11,799
200	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_Work Order 20-272_FE_6Jul2020	7/7/2020	-
201	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_CO SOW8_NI-MC301_FE_27Jun2019	6/27/2019	-
202	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_CO SOW9_NI-MC302_FE_27Jun2019	6/27/2019	-
203	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_NI-MC101_WO 19-537_CO 1_FE_15Aug2019	8/14/2019	-
204	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_SOW8_MC301_FE_28Mar2019	4/1/2019	-
205	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_SOW9_MC302_FE_28Mar2019	4/1/2019	-
206	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_WO 19-531_AD201_FE_27Sept2019	9/27/2019	-
207	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_WO 19-537_MC101_FE_15Jul2019	7/9/2019	-
208	Clinical Supplies Management, Inc.	Novan, Inc.	CSM_WO 19-664_HF_FE_16Sep2019	9/13/2019	-
209	CluePoints Inc.	Novan, Inc.	Cluepoints_MSA_Amendment1_FE_11Mar2019	2/21/2019	-
210	CluePoints Inc.	Novan, Inc.	Cluepoints_SOW2_FE_15Apr2019	4/15/2019	-
211	CluePoints Inc.	Novan, Inc.	Cluepoints_SOW_MC304_FE_21Aug2020	8/18/2020	-
212	CluePoints Inc.	Novan, Inc.	Cluepoints_SOW 3_FE_28Jan2021	1/11/2021	-
213	CobbleStone Systems Corp	Novan, Inc.	Cobblestone_LicenseAgreement_FE_4Sept2019	9/4/2019	-
214	Cole Rakar	Novan, Inc.	CONSULTING SERVICES AGREEMENT	3/16/2022	-
215	Cole Rakar	Novan, Inc.	Rakar_Cole_CSA_FE_16Mar2022	3/16/2022	-
216	Commissioning Agents, Inc	Novan, Inc.	CAI_SOW 1_FE_15Nov2021	11/15/2021	95,610
217	Commissioning Agents, Inc	Novan, Inc.	Commissioning Agents_Mutual NDA_FE_4Feb2021	2/4/2021	-
218	Commissioning Agents, Inc	Novan, Inc.	Commissioning Agents_SOW2_FE_6Feb2023	2/6/2023	-
219	Commissioning Agents, Inc	Novan, Inc.	Commissioning Agents_MSA_FE_16Apr2021	4/12/2021	-
220	Competitive Innovation, LLC	Novan, Inc.	Competitive Innovation_CSA_FE_5Aug2022	8/5/2022	-
221	Concur Technologies, Inc.	Novan, Inc.	Concur_Assignment and Assumption_FE_2Jun2022	6/2/2022	-
222	Connie Yang	Novan, Inc.	Connie Yang_MCSA_FE	3/14/2023	-
223	Connie Yang	Novan, Inc.	Zachary Joseph Solomon_MCSA_FE	3/14/2023	-
224	Continental Casualty Company (CNA)	Novan, Inc.	Continental Casualty Company	7/20/2020	-
225	Contract Pharmaceuticals Limited Canada	Novan, Inc.	CPL_Mutual NDA_FE_15Jul2022	7/15/2022	-
226	Cooper International FZ LLC	Novan, Inc.	Cooper International_Mutual NDA_FE_1Sept2022	9/1/2022	-
227	CoverMyMeds LLC	Novan, Inc.	CoverMyMeds_Mutual NDA_FE_21Dec2022	12/21/2022	-
228	CREO, Inc.	Novan, Inc.	CREO_Mutual NDA_FE_10Dec2021	12/10/2021	-
229	CREO, Inc.	Novan, Inc.	CREO_SOW2_FE_17Mar2022	3/8/2022	-
230	Crown Equipment Corporation	Novan, Inc.	Short Term Rental Agreement	6/13/2022	-
231	CTI Holdings Inc.	Novan, Inc.	CTI_Mutual NDA_FE_24Apr2019	4/23/2019	-
232	CTI Holdings Inc.	Novan, Inc.	CTI_Proposal2_FE_27Jun2019	6/27/2019	-
233	CTI Holdings Inc.	Novan, Inc.	CTI_Proposal3_SB207_Protocol Synopsis and Regulatory Support_FE_18Sep2019	9/16/2019	-
234	Custom Gas Solutions L.L.C.	Novan, Inc.	Custom Gas Solutions_CSA_FE_24Aug2022	8/24/2022	-
235	CVS Caremark	EPI Health, LLC	The Rebate Agreement by and between CAREMARK PCS HEALTH, L.L.C and EPI HEALTH, LLC- January 1, 2020	1/1/2020	306,349
236	David King	Novan, Inc.	King_David_Mutual NDA_FE_2Aug2021	7/28/2021	-
237	Delta Project s.r.l.	Novan, Inc.	Delta Project_Huvepharma_NDA IP Assignment_FE_1Jul2021	7/1/2021	-
238	Dennis Amundson, MS DO	Novan, Inc.	Amundson_Dennis_Mutual NDA_FE_20Jan2022	1/20/2022	-
239	Dermalliance LLC	Novan, Inc.	Dermalliance Llc_MCSA_FE	3/14/2023	-
240	Dermatology Associates of Mid Ohio	Novan, Inc.	Dermatology Associates Of Mid Ohio_MCSA_FE	3/14/2023	-



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241	Dermatology Consulting Services, PLLC	EPI Health, LLC	Master Services Agreement by and between Dermatology Consulting Services, PLLC, and EPI Health, LLC	9/28/2021	-
242	Development Insights LLC	Novan, Inc.	Development Insights_Mutual NDA_FE_25Jun2021	6/24/2021	-
243	Doe & Ingalls	Novan, Inc.	Doe & Ingalls_Stocking Agreement_FE_26May2022	5/26/2022	119,284
244	Doe & Ingalls	Novan, Inc.	Doe and Ingalls_WSA_PE_12Aug2021	8/6/2021	-
245	Dottikon Exclusive Synthesis AG	Novan, Inc.	Dottikon_Quality Agreement_FE_15Jul2019	7/15/2019	-
246	Dottikon Exclusive Synthesis AG	Novan, Inc.	Dottikon_MSA_FE-final_19Jun2019	6/12/2019	-
247	Dottikon Exclusive Synthesis AG	Novan, Inc.	Dottikon_Project Order 1 CO1_FE_18Oct2019	10/2/2019	-
248	DPS Group, Inc.	Novan, Inc.	DPS Group, Inc._CO #1_FE_7Jul2020	7/7/2020	-
249	DPT	EPI Health, LLC	Revised Schedule A, dated January 9, 2019	1/9/2019	-
250	DPT	EPI Health, LLC	Revised Schddule A, dated November 14, 2019	11/14/2019	-
251	DPT & Dr. Reddy's	EPI Health, LLC	Manufacturing Agreement between DPT Laboratories, Ltd. And Dr. Reddy's Laboratories, Inc.	11/8/2007	275,770
252	DPT & Dr. Reddy's	EPI Health, LLC	First Amendmend to the Manufacturing Agreement dated May 28, 2008,	5/28/2008	-
253	DPT & Dr. Reddy's	EPI Health, LLC	Third Amendment to Manufacturing Agreement and Agreement Regarding Product Transfer, between Promius Pharma	7/26/2012	-
254	DPT & Dr. Reddy's	EPI Health, LLC	Foruth Amendment to Manufacturing Agreement and Agreement Regarding Product Transfer, between Promius Pharma	5/31/2013	-
255	DPT & Dr. Reddy's	EPI Health, LLC	FifthSecond Amendment to Manufacturing Agreement and Agreement Regarding Product Transfer, between Promius Pharma	6/24/2013	-
256	DPT & Promius Pharma	EPI Health, LLC	Second Amendment to Manufacturing Agreement and Agreement Regarding Product Transfer, between Promius Pharma	3/31/2011	-
257	DPT Laboratories	EPI Health, LLC	Revised Schedule A, dated November 15, 2021	11/15/2021	-
258	DPT Laboratories, LTD	Novan, Inc.	DPT_Sato_3 way NDA_FE_19Apr2023	4/19/2023	-
259	DPT Laboratories, Ltd.	EPI Health, LLC	Master Manufacturing and Supply Agreement, by and between Allergan Sales, LLC and DPT Laboratories,	8/16/2018	262,934
260	DPT Laboratories, Ltd.	EPI Health, LLC	Purchase Order - Original 4301432450, dated September 5, 2018	9/5/2018	-
261	DPT Laboratories, Ltd.	EPI Health, LLC	Notice of Assignment, dated November 30, 2018	11/30/2018	-
262	DPT Laboratories, Ltd.	EPI Health, LLC	RE: Contract Manufacturing and Supply Agreement dated August 16, 2018 between Allergan Sales LLC and DPT Laboratories	8/16/2018	-
263	DPT Laboratories, Ltd.	EPI Health, LLC	Quality Agreement on Contract Manufacturin by and between Aclaris Theraputics and DPT Laboratories Ltd.	11/30/2018	-
264	Dr Julie Harper	EPI Health, LLC	SOW	TBD	-
265	Dr. Marino Nebuloni	Novan, Inc.	Nebuloni_Marino_Huvepharma_NDA IP Assignment_FE_25May2021	5/25/2021	-
266	Dr. Reddy's	EPI Health, LLC	Asset Purchase and License Agreement by and between Dr. Reddy's Laboratories, Ltd. And EPI Health	8/20/2018	-
267	Dr. Reddy's	EPI Health, LLC	Assignment and Assumption Agreement between Dr. Reddy's Laboratories, Ltd. And EPI Health, LLC	8/20/2018	-
268	Dr. Reddy's	EPI Health, LLC	Bill of Sale, dated August 20, 2018	8/20/2018	-
269	Dr. Reddy's	EPI Health, LLC	Assignment of Domain Names by and between Dr. Reddy's Laboratories, Inc. and EPI Health, LLC	8/20/2018	-
270	Dr. Reddy's	EPI Health, LLC	Supply Agreement, by and between Dr. Reddy's Laboratories Ltd. and EPI Health, LLC	8/20/2018	-
271	Dr. Reddy's	EPI Health, LLC	Trademark Assignment Agreement by anad between Dr. Reddy's Laboratories, Ltd. And EPI Health, LLC	8/8/2018	-
272	Dr. Reddy's, Promius, EPI, and DPT	EPI Health, LLC	Assignment and Assumption Agreement with Novation, between Dr. Reddy's Laboratories, Inc., Promius Pharma LLC and DPT Laboratories Ltd.	11/1/2018	-
273	Dragonfly Agency	EPI Health, LLC	MSA	TBD	-
274	Dragonfly Agency Corporation	Novan, Inc.	Dragonfly Agency_MSA_FE_15Aug2022	8/15/2022	-
275	DSB Consulting LLC	Novan, Inc.	Dsb Consulting_MCSA_FE	3/14/2023	-
276	Duo Security, Inc.	Novan, Inc.	Duo Order Form_FE_4May2022	5/7/2022	-
277	East Tennessee Clinical Research, Inc.	Novan, Inc.	ETCR_Scullion_3-way Mutual NDA_FE_28Dec2020	12/28/2020	-
278	East Tennessee Clinical Research, Inc.	Novan, Inc.	ETCR_SOW1_FE_10Feb2021	2/10/2021	-
279	East Tennessee Clinical Research, Inc.	Novan, Inc.	ETCR_MSA_FE_29Jan2021	1/29/2021	-
280	East Tennessee Clinical Research, Inc.	Novan, Inc.	ETCR_SOW2_FE_6Apr2021	4/6/2021	-
281	Easysnap Technology S.r.l.	Novan, Inc.	Easysnap_Proposal_FE_24Oct2019	10/22/2019	799

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282	Easysnap Technology S.r.l.	Novan, Inc.	Easysnap_WO_FE_8Oct2020	10/2/2020	-
283	Easysnap Technology S.r.l.	Novan, Inc.	Easysnap_Am to Quote 19093.3_FE_9Sept2021	8/24/2021	-
284	Easysnap Technology S.r.l.	Novan, Inc.	Easysnap_Annex B to Quote 19093.3_FE_17May2022	4/27/2022	-
285	Edward Lain	Novan, Inc.	Ted Lain Md Consulting Llc_MCSA_FE	3/14/2023	-
286	EF Hutton, devision of Benchmark Investments, LLC	Novan, Inc.	EF Hutton_NDA_FE_11Apr2023	4/11/2023	-
287	Ei LLC	Novan, Inc.	Ei_Agreement BOS_FE_23Jan2019	1/22/2019	-
288	Elaine May	Novan, Inc.	May_Elaine_Mutual NDA_FE_29Jul2020	7/29/2020	-
289	Elixir	EPI Health, LLC	Commercial Rebate Agreement by and between Envision Pharmaceutical Services, LLC and Aclaris Therape	10/16/2019	-
290	Elixir	EPI Health, LLC	First Amendment to Commercial Rebate Agreement by and between Elixir Rx Solutions of Nevada, LLC fka	1/1/2022	-
291	Elizabeth Swanson LLC	Novan, Inc.	Elizabeth Swanson Llc_MCSA_FE	3/14/2023	-
292	Emisar Pharma Services, LLC	EPI Health, LLC	Rebate Agreement by and between Emisar Pharma Services LLC and EPI Health, LLC, effective August 1	8/1/2022	4,670,995
293	Emisar Pharma Services, LLC	EPI Health, LLC	Amendment to the Rebate Agreement by and between Emisar Pharma Services LLC and EPI Health, LLC	8/1/2022	-
294	EMTO GmbH	Novan, Inc.	Patheon_EMTO_3-way NDA_FE_1Dec2021	12/1/2021	-
295	Endurance Assurance Corporation a member of the Somp International group of companies	Novan, Inc.	Endurance Assurance_Sompo_One Way NDA_FE_16Aug2021	8/10/2021	-
296	ENG Solutions, Inc.	Novan, Inc.	ENG Solutions_AIA B104_FE_18Aug2022	6/1/2022	500
297	ENG Solutions, Inc.	Novan, Inc.	ENG Solutions_Mutual NDA_FE_22May2023	5/22/2023	-
298	Envoy, Inc.	Novan, Inc.	Envoy_Quote 16212-1_FE_15Feb2023	2/15/2023	-
299	EPI Health LLC	Novan, Inc.	EPI Health_NDA_FE_8Nov2021	11/8/2021	-
300	Eric Yang	Novan, Inc.	Eric Yang_MCSA_FE	3/14/2023	-
301	Ernst & Young US LLP	Novan, Inc.	Ernst and Young_SOW_FE_1Sept2022	9/1/2022	166,416
302	eStrat, LLC	Novan, Inc.	eStrat_NDA_FE	1/12/2023	-
303	Eurofarma Laboratorios S.A.	Novan, Inc.	Eurofarma Laboratorios_Mutual NDA_FE_8Jun2023	6/8/2023	-
304	Eurofins MWG Operon LLC	Novan, Inc.	Eurofins_Mutual NDA_FE_15May2019	5/7/2019	-
305	Evans General Contractors, LLC	Novan, Inc.	Evans General Contractors_Mutual NDA_FE_14Aug2020	8/14/2020	-
306	Evening Post Group, LLC	Novan, Inc.	Pending	TBD	1,000,000
307	Evergreen Healthcare Consulting LLC	Novan, Inc.	Evergreen Consulting, LLC Statement of Work #1	1/12/2023	1,950
308	Evergreen Healthcare Consulting LLC	Novan, Inc.	Evergreen HealthCare MSA	1/11/2023	-
309	Express Customs Clearance (USA), Inc	Novan, Inc.	Express Customs Clearance_Cont Customs Bond_FE_10Sept2021	9/10/2021	-
310	Express Scripts, Inc.	EPI Health, LLC	Preferred Savings Grid Rebate Program Agreement by and between Express Scripts, Inc. and EPI Health	4/1/2020	19,196
311	Express Scripts, Inc.	EPI Health, LLC	First Amendment to the Preferred Savings Grid Rebate Program Agreement by and between Express Scripts	4/1/2021	-
312	Express Scripts, Inc.	EPI Health, LLC	Second Amendment to the Preferred Savings Grid Rebate Program Agreement by and between Express Scripts	7/1/2021	-
313	Express Scripts, Inc.	EPI Health, LLC	Fourth Amendment to the Preferred Savings Grid Rebate Program Agreement by and between Express Scripts	7/1/2022	-
314	Express Scripts, Inc.	EPI Health, LLC	First Amendment to the Inflation Agreement by and between Express Scripts, Inc. and EPI Health, LLC	7/1/2021	-
315	Fauske & Associates, LLC	Novan, Inc.	Fauske_Westinghouse_CCN_FE_16Mar2022	3/16/2022	-
316	Fauske & Associates, LLC	Novan, Inc.	Fauske_SOW_1_FE_10Aug2020	8/10/2020	-
317	Fauske & Associates, LLC	Novan, Inc.	Fauske_SOW F21-0092_FE_28Apr2021	4/28/2021	-
318	FedEx	Novan, Inc.	FedEx_Pricing Agreement_FE_8Oct2019	8/5/2019	1
319	Felton Banks PLLC	Novan, Inc.	Felton Banks_Engagement Letter_FE_23Sept2019	9/12/2019	-
320	Felton Banks PLLC	Novan, Inc.	Michael Best_Transfer Letter_FE_8Oct2019	9/30/2019	-
321	Fern Lane Software, LLC	Novan, Inc.	Fern Lane Software_MSA_FE_11May2022	5/11/2022	-
322	Fern Lane Software, LLC	EPI Health, LLC	MSA	TBD	3,341
323	Fifth Third Bank, NA	Novan, Inc.	Fifth Third Bank_Mutual NDA_FE_1Jul2022	7/1/2022	-
324	Fingerpaint Marketing, Inc.	EPI Health, LLC	MSA	TBD	-
325	Flores & Associates	Novan, Inc.	Flores & Associates_SA_FE_27Sept2019	9/24/2019	-
326	Frankel Staffing Partners	Novan, Inc.	Frankel Staffing_Service Agreement_FE_11Oct2021	10/11/2021	-
327	Full Scale Solutions, Inc	Novan, Inc.	FullScale Solutions_Service Agreement_FE_18Oct2021	10/12/2021	-
328	G&M Health LLC	Novan, Inc.	G&M Health_Mutual NDA_FE_31Aug2022	8/31/2022	-
329	Galen Patient Recruitment, Inc.	Novan, Inc.	Galen Patient Recruitment_SOW 2 Am1_FE_17Dec2020	12/22/2020	-

## Exhibit 1: Contract Schedule

ID #	Contract Counterparty	Debtor Name	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
330	Gannett Fleming Inc.	Novan, Inc.	Gannett Fleming_MSA_FE_4Apr2021	4/4/2021	1,472
331	Gannett Fleming Inc.	Novan, Inc.	Gannett Fleming_SOW1_FE_11May2021	5/11/2021	-
332	Glick Skin - GSI Clinical Research	Novan, Inc.	Glick Skin - Gsi Clinical Research_MCSA_FE	3/14/2023	-
333	Gold Skin Care Center	Novan, Inc.	Gold Skin Care Center_MCSA_FE	3/14/2023	-
334	Harrison Phu Nguyen	Novan, Inc.	Harrison Phu Nguyen_MCSA_FE	3/14/2023	-
335	HC Wainwright & Co.	Novan, Inc.	Novan_HCW_ATM Term Sheet_Executed_4Feb2019	2/4/2019	-
336	Heidi Graham	Novan, Inc.	Graham_Heidi_SOW5_FE_22Feb2022	2/22/2022	-
337	Heidi Graham	Novan, Inc.	Graham_Heidi_SOW4_FE_1Nov2021	11/1/2021	-
338	Heidi Graham	Novan, Inc.	Shine Advisor_SOW3_FE_4Feb2021	2/4/2021	-
339	Hercules Capital Inc.	Novan, Inc.	Hercules Capital_NDA Am1_FE_27Jul2021	7/27/2021	-
340	Hilary E. Baldwin, M.D.	Novan, Inc.	Hilary Baldwin_MCSA_FE	3/14/2023	-
341	HITT Contracting, Inc.	Novan, Inc.	HITT Contracting_Mutual NDA_FE_14Aug2020	8/14/2020	-
342	HLP Klearfold	Novan, Inc.	HLP Klearfold_Mutual NDA_FE_3May2022	4/27/2022	-
343	Horizon Video Productions, Inc.	Novan, Inc.	Horizon Productions_Proposal_FE_3Apr2019	4/3/2019	-
344	Horizon Video Productions, Inc.	Novan, Inc.	Horizon Productions_Proposal_MC101 Illustrations_FE_2Aug2019	8/1/2019	-
345	Hudson Insurance Group	Novan, Inc.	Hudson Financial Products_Mutual NDA_FE_20Jul2020	7/20/2020	-
346	Huvepharma Italia S.r.l.	Novan, Inc.	Huvepharma_Cilatus_3-way NDA_FE_5Oct2020	9/30/2020	-
347	Hydro Service & Supplies, Inc.	Novan, Inc.	Hydro_SA_FE_7Jan2022	1/7/2022	-
348	Hyman, Phelps & McNamara PC	Novan, Inc.	Hyman Phelps @ McNamara_Rep Letter_FE_1Aug2022	7/27/2022	3,845
349	Industrial Automated Systems, Inc.	Novan, Inc.	Industrial Automated Systems_MSA_FE_11Feb2022	2/11/2022	10,434
350	Industrial Automated Systems, Inc.	Novan, Inc.	Industrial Automated Systems_CO1 to Quote 22085_FE_12May2022	5/12/2022	-
351	Innovaderm Research Inc.	Novan, Inc.	Innovaderm_AD201 SUA_FE_16Sept2019	9/10/2019	-
352	Innovaderm Research Inc.	Novan, Inc.	Innovaderm_AD201 SUA_FE_16Sept2019	4/2/2020	-
353	Innovative Regulatory Consulting LLC	Novan, Inc.	Innovative Regulatory Consulting_CSA_FE_10Mar2021	3/10/2021	-
354	Innovative Regulatory Consulting LLC	Novan, Inc.	Innovative Regulatory Consulting_Mutual NDA_FE_8Mar2021	3/8/2021	-
355	Innoeva Technologies, LLC	Novan, Inc.	Innoeva Technologies_SOW2_FE_14Oct2019	9/1/2019	36,316
356	Innovenn, Inc.	Novan, Inc.	Innovenn_MSA-SOW_FE_21May2019	4/26/2019	-
357	Inovalon Insights, LLC	Novan, Inc.	Inovalon Insights_Mutual NDA_FE_26Oct2022	10/26/2022	-
358	Integrated Nonclinical Development Solutions, Inc.	Novan, Inc.	INDS_SOW2_SB206 NDA Prep_FE_13Jul2021	6/1/2021	-
359	International Process Plants	Novan, Inc.	International Process Plants	8/11/2020	-
360	Intertek Melbourne	Novan, Inc.	Intertek Melbourn_Mutual NDA_FE_24Jun2021	6/16/2021	-
361	Intertek Melbourne	Novan, Inc.	Intertek_SOW_2_Quote 7651_FE_18May2022	5/12/2022	-
362	Intertek Melbourne	Novan, Inc.	Intertek Melbourn_MSA_FE_30Sept2021	9/30/2021	-
363	Intertek Melbourne	Novan, Inc.	Intertek Melbourn_SOW1_FE_11Oct2021	9/30/2021	-
364	IQVIA Inc.	Novan, Inc.	IQVIA-Novella_MSA Am1_FE_10Apr2019	4/12/2019	5,055
365	IQVIA Inc.	EPI Health, LLC	Statement of Work by and between IQVIA Inc. and EPI Health, LLC	5/1/2023	171,471
366	IQVIA Inc.	EPI Health, LLC	Statement of Work by and between IQVIA Inc. and EPI Health, LLC	4/24/2020	-
367	J. Anderson Law PLLC	Novan, Inc.	J Anderson Law_Novan_Engagement Letter_16May2019_FE	5/16/2019	-
368	JAF Consulting, Inc.	Novan, Inc.	JAF Consulting_CO_FE_11Jul2019	7/9/2019	-
369	Jeffrey Sugarman	Novan, Inc.	Jeffrey Sugarman_MCSA_FE	2/24/2023	-
370	Jenkins, Wilson, Taylor & Hunt, P.A.	Novan, Inc.	Jenkins Wilson Taylor and Hunt_Representation Agreement_FE_24Jan2022	1/24/2022	-
371	John Browning, MD	Novan, Inc.	John Browning, Md_MCSA_FE	2/24/2023	-
372	John Paul Miller	Novan, Inc.	John Miller_MCSA_FE	3/14/2023	-
373	Jonathan Samuel Weiss	Novan, Inc.	Jonathan Samuel Weiss_MCSA_FE	3/14/2023	-
374	Joyce Kong	Novan, Inc.	Joyce Kong_MCSA_FE	3/14/2023	-
375	K2 HealthVentures Group LLC	Novan, Inc.	K2 HealthVentures_Mutual NDA_FE_6Oct2021	10/6/2021	-
376	KBI Biopharma Inc.	Novan, Inc.	KBI Biopharma_Mutual NDA_FE_8Dec2021	12/8/2021	-
377	Kerrie Powell Consulting LLC	Novan, Inc.	Kerrie Powell Consulting_Mutual NDA_FE_3Aug2020	7/31/2020	-
378	Kerrie Powell Consulting LLC	Novan, Inc.	Kerrie Powell Consulting_SOW2_FE_31Aug2020	8/27/2020	-
379	Kerrie Powell Consulting LLC	Novan, Inc.	Kerrie Powell Consulting_MSA_FE_17Aug2020	8/10/2020	-
380	Keystone Folding Box Co	Novan, Inc.	Keystone Box Folding_Mutual NDA_FE_15Feb2022	2/15/2022	-
381	Kinsale Holdings, Inc.	Novan, Inc.	Validant_MSA_FE_27Apr2021	4/27/2021	-
382	Kinsale Holdings, Inc.	Novan, Inc.	Validant_SOW1_FE_27Apr2021	4/27/2021	-
383	Klifovet AG	Novan, Inc.	Klifovet_Mutual NDA_FE_3Aug2020	8/3/2020	-
384	Knipper Health, Inc.	Novan, Inc.	KnipperRx_Mutual NDA_FE_13Dec2022	12/13/2022	-
385	KNOW Bio, LLC	EPI Health, LLC	UNC Sublicense Agreement, dated December 29, 2015, by and between Novan, Inc. and KNOW Bio,	12/29/2015	-
386	KNOW Bio, LLC	EPI Health, LLC	Novan Patent and Know-How License Agreement, dated December 29, 2015, by and between Novan,	12/29/2015	-

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ID #	Contract Counterparty	Debtor Name	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
387	KnowBe4	Novan, Inc.	KnowBe4_Subscription Agreement_FE_4Oct2022	10/4/2022	-
388	Krieger AG	Novan, Inc.	Krieger_PlusMinus for WO220500_FE_19Feb2021	2/18/2021	-
389	Krieger AG	Novan, Inc.	Krieger_PlusMinus for WO220500_FE_19Feb2021	2/18/2021	-
390	Krieger AG	Novan, Inc.	Krieger_Change Order_FE_7May2021	2/19/2021	-
391	Kristin Torre	Novan, Inc.	Kristin Torre_MCSA_FE	3/14/2023	-
392	Kymanox Corporation	Novan, Inc.	Kymanox_SOW18_FE_25Aug2022	8/25/2022	-
393	Kymanox Corporation	Novan, Inc.	Kymanox_SOW14 Am1_FE_13Dec2021	12/13/2021	-
394	Kymanox Corporation	Novan, Inc.	Kymanox_MSA_FE_10May2021	5/10/2021	-
395	Labcorp Drug Development Inc.	Novan, Inc.	Labcorp_SSA Am1_Covid Protocol_FE_6Dec2021	12/7/2021	-
396	Labcorp Drug Development Inc.	Novan, Inc.	Labcorp_SSA_Covid Protocol_FE_20Sept2021	9/20/2021	-
397	Lane Kuntz (Malana Kuntz)	EPI Health, LLC	CSA	TBD	-
398	Lappenbusch Medical Writing Group LLC	Novan, Inc.	Lappenbusch Medical Writing_CSA Am1_FE_15Feb2019	2/14/2019	-
399	Lappenbusch Medical Writing Group LLC	Novan, Inc.	Lappenbusch Medical Writing_CSA Am2_FE_11Jul2019	4/30/2019	-
400	Law office of Kathleen Lynch, PLLC	Novan, Inc.	Lynch_Kathleen_Confidentiality-Assignment of Inventions_FE_12Feb2019	1/1/2019	14,511
401	Law office of Kathleen Lynch, PLLC	Novan, Inc.	Lynch_Kathleen_CSA_FE_12Feb2019	2/11/2019	-
402	Law office of Kathleen Lynch, PLLC	Novan, Inc.	Lynch_Kathleen_POA_FE_14Jan2021	1/1/2021	-
403	Lawrence F. Eichenfield	Novan, Inc.	Eichenfield_Lawrence_Termination Agreement_CSA_17Aug2020	8/1/2020	-
404	Lawrence J. Green MD	Novan, Inc.	ADVISOR AGREEMENT	10/1/2022	-
405	Lawrence J. Green MD	Novan, Inc.	Lawrence J Green Md Llc_MCSA_FE	3/14/2023	-
406	Legacy Pharma Inc.	Novan, Inc.	Legacy Pharma_Mutual NDA_FE_8Jun2023	6/8/2023	-
407	Level 3 Communications	Novan, Inc.	CenturyLink-Lumen_Service Order_FE_23Feb2021	2/23/2021	1,417
408	Life Storage Solutions, LLC	EPI Health, LLC	Master Rental Agreement	TBD	10,559
409	Ligan Pharmaceuticals, Incorporated	Novan, Inc.	Ligand_Development Funding and Royalties Agreement_FE_30May2019	5/4/2019	1,000,000
410	Ligan Pharmaceuticals, Incorporated	EPI Health, LLC	Development Funding and Royalties Agreement, dated May 4, 2019, by and between Novan, Inc. a	5/4/2019	-
411	Lincoln Harris	Novan, Inc.	Lincoln Harris_Lease Am2_FE_19Nov2021	1/18/2021	-
412	Lincoln Harris	Novan, Inc.	Lincoln Harris_Estoppel_FE_1Dec2021	12/1/2021	-
413	Lincoln Harris	Novan, Inc.	Lincoln Harris_Estoppel_FE_11Oct2022	10/11/2022	-
414	Linkoping University	Novan, Inc.	Linkoping University_Mutual NDA_FE_14Feb2022	2/14/2022	-
415	Linkoping University	Novan, Inc.	Linkoping University_Research and MTA_FE_1Aug2022	7/25/2022	-
416	Lisa Akintilo	Novan, Inc.	Lisa Akintilo_MCSA_FE	3/14/2023	-
417	Longfellow Real Estate Ventures LLC	Novan, Inc.	Longfellow_Tenant Estoppel Request_FE_23Jul2019	7/18/2019	-
418	Lovelace Biomedical (a division of Lovelace Respiratory Research Institute)	Novan, Inc.	Lovelace_MSA_FE_6Nov2020	11/5/2020	-
419	Lubrizol Advanced Materials, Inc.	Novan, Inc.	Lubrizol_Mutual NDA_FE_20Feb2023	2/20/2023	-
420	LYFE U.S. LLC	Novan, Inc.	Lyfe US_Mutual NDA_FE_17Feb2023	2/17/2023	-
421	MacLean Contract Services, Inc.	Novan, Inc.	MacLean Contract Services_CSA Termination_FE_16Jan2020	1/10/2020	-
422	Madryn Asset Management, LP	Novan, Inc.	Madryn Asset Management_NDA_FE_12Sept2022	9/12/2022	-
423	Mangan Inc.	Novan, Inc.	Mangan_Mutual NDA_FE_19Oct2021	10/19/2021	-
424	Manisha Jashbhai Loss	Novan, Inc.	Loss_Manisha_CSA Termination Agreement	1/8/2020	-
425	Manuel Valdebran, MD	Novan, Inc.	Valdebran_Manuel_Internship Agreement_FE_27Feb2023	2/27/2023	-
426	Markel Service, Incorporated	Novan, Inc.	Markel_One Way NDA_FE_16Aug2021	8/12/2021	-
427	Marnel Pharmaceuticals LLC	Novan, Inc.	Marnel_Mutual NDA_FE_9Nov2022	11/9/2022	-
428	MasterControl	Novan, Inc.	MasterControl_SaaS Agreement_FE_10Sept2019	9/10/2019	17,200
429	MasterControl	Novan, Inc.	Mastercontrol_Quote_FE_10Feb2023	2/10/2023	-
430	Matrix Engagement Group	EPI Health, LLC	MSA & SOW	TBD	-
431	MATRIX Engagement Group, LLC	Novan, Inc.	Matrix Engagement Group_MSA_FE_18Jan2023	1/18/2023	-
432	Mayne Pharma Commercial LLC	Novan, Inc.	Mayne Pharma Commercial_Mutual NDA_FE_1Jun2023	6/1/2023	-
433	MC2 Therapeutics Limited	EPI Health, LLC	Amended and Restated Promotion and Collaboration Agreement by and between MC2 Therapeutics	1/1/2022	654,052
434	MC2 Therapeutics Limited	EPI Health, LLC	Exhibit 1.74 to the Promotion and Collaboration Agreement by and between MC2 Therapeutics	8/12/2020	-
435	MC2 Therapeutics Limited	EPI Health, LLC	Exhibit 5.5 (SDEA) to the Promotion and Collaboration Agreement by and between MC2 Therapeutics	8/12/2020	-
436	MC2 Therapeutics Limited	EPI Health, LLC	Exhibit 8.1 to the Promotion and Collaboration Agreement by and between MC2 Therapeutics Limited	8/12/2020	-

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437	MC2 Therapeutics Limited	EPI Health, LLC	Exhibit 8.2 (Quality Agreement) to the Promotion and Collaboration Agreement by and between MC2 Therapeutics Limited	8/12/2020	-
438	McDonald York Building Company	Novan, Inc.	McDonald York_EWA2_FE_22Jan2021	1/22/2021	-
439	McDonald York Building Company	Novan, Inc.	McDonald York_AIA_FE_1Mar2021	3/1/2021	-
440	McDonald York Building Company	Novan, Inc.	McDonald York_EWA18b_FE_11May2021	5/11/2021	-
441	McDonald York Building Company	Novan, Inc.	McDonald York_EWA 7B_FE_1Mar2021	3/1/2021	-
442	McLio LLC	Novan, Inc.	McLio_Llc_MCSA_FE	2/24/2023	-
443	Medexus Pharmaceuticals Inc.	Novan, Inc.	Medexus_Mutual NDA_FE_12Apr2023	4/12/2023	-
444	Medicis + Affiliates & Dr. Reddy's	EPI Health, LLC	License and Settlement Agreement, by and between Medicis Pharmaceutical Corporation, on behalf of itself and affiliates	3/17/2017	-
445	Medmarc	Novan, Inc.	MedMarc_Mutual NDA_FE_2Mar2022	3/3/2022	-
446	Medomie Pharma Ltd	Novan, Inc.	Medomie Pharma_Mutual NDA_FE_15May2023	5/15/2023	-
447	MedPharm Ltd.	Novan, Inc.	MedPharm_SOW5_FE_13May2019	4/10/2019	-
448	MedPharm Ltd.	Novan, Inc.	MedPharm_SOW 5 Am1_FE_14Jul2020	7/14/2020	-
449	MedPharm Ltd.	Novan, Inc.	MedPharm_Bill of Sale_FE_20Aug2020	8/20/2020	-
450	MedPro	EPI Health, LLC	Change Order to SOW	TBD	-
451	MelGel Enterprises LLC	Novan, Inc.	Melgel Enterprises Llc_MCSA_FE	3/14/2023	-
452	MELVIN WHITEHEAD	Novan, Inc.	Whitehead_Melvin_NDA_FE_21Oct2021	10/21/2021	-
453	Mercedes E Gonzalez MD PA	Novan, Inc.	Mercedes E Gonzalez Md Pa_MCSA_FE	2/24/2023	-
454	MHA Works	Novan, Inc.	MHAworks_SOW1_FE_30Sept2019	9/10/2019	-
455	Miles Restoration, LLC (Jeff Chaffin)	EPI Health, LLC	CSA	TBD	-
456	Morgan Franklin Consulting, LLC	Novan, Inc.	MorganFranklin_MSA_FE_22Jul2022	7/22/2022	-
457	Motus, LLC	Novan, Inc.	Motus_Order Form_FE_21Dec2022	1/1/2023	-
458	Motus, LLC	EPI Health, LLC	Order Form	TBD	19,357
459	MultiCore Program Management Services	Novan, Inc.	Fuller_Gerald Wayne_CSA_FE_21Jul2020	7/21/2020	8,950
460	Nanette Silverberg MD PLLC	Novan, Inc.	Agreement.	4/17/2023	-
461	Nanette Silverberg MD PLLC	Novan, Inc.	Silverberg_Nanette_SOW1_FE_17Apr2023	4/17/2023	-
462	Nanoderm Consulting LLC	Novan, Inc.	Nanoderm_NDA_FE_10Nov2022	11/10/2022	-
463	National Union Fire Insurance Company of Pittsburgh Pa. (AIG)	Novan, Inc.	National Union Fire Insurance Company of Pittsburgh Pa. (AIG)	7/21/2020	-
464	NDA Regulatory Development Inc.	Novan, Inc.	NDA Group_Mutual NDA_FE_14Apr2021	4/14/2021	-
465	NDA Regulatory Development Inc.	Novan, Inc.	NDA Group_MSA_FE_5May2021	5/5/2021	-
466	Nehal Shah	Novan, Inc.	Nehal Shah_MCSA_FE	3/14/2023	-
467	Nippon Gases Industrial Srl	Novan, Inc.	Nippon Gases_Huvepharma_3way NDA IP Assign_FE_5Sept2022	9/5/2021	-
468	Nishad Sathe	Novan, Inc.	Nishad Sathe_MCSA_FE	3/14/2023	-
469	Noel McBride	Novan, Inc.	McBride_Noel_CSA_FE_6Jun2022	5/24/2022	-
470	North Carolina State University	Novan, Inc.	NCSU_Mutual NDA_FE_23Sept2020	9/24/2020	-
471	NovaQuest Pharma Opportunities Fund V, LP	Novan, Inc.	NovaQuest Pharma_Mutual NDA_FE_29Oct2021	10/29/2021	-
472	Novus Proximus LLC (Patrick Coyle)	EPI Health, LLC	CSA	TBD	-
473	Numerof & Associates Inc.	Novan, Inc.	Numerof and Associates_Mutual NDA_FE_25Jan2022	1/25/2022	-
474	Nuventra Pharma Sciences, Inc.	Novan, Inc.	Nuventra_SOW2_FE_2Oct2019	10/2/2019	-
475	Nuvo Pharmaceuticals Inc. dba Miravo Healthcare	Novan, Inc.	Miravo_Mutual NDA_FE_7Apr2022	4/7/2022	-
476	Oaktree Capital Management, L.P.	Novan, Inc.	Oaktree Capital Management_Mutual NDA_FE_7Oct2021	10/7/2021	-
477	Old Republic Professional Liability, Inc.	Novan, Inc.	Old Republic Professional Liability, Inc	7/20/2020	-
478	Oliver Design LLC	Novan, Inc.	Oliver Design_Mutual NDA_FE_10Jan2022	1/10/2022	-
479	Oppenheimer & Co. Inc	Novan, Inc.	Oppenheimer_Am1 to Letter Agreement_FE_27Jan2022	1/27/2022	-
480	OptumRx, Inc.	EPI Health, LLC	Rebate Agreement by and between OptumRx, Inc. and Aclaris Therapeutics, Inc	9/1/2019	33,218
481	OptumRx, Inc.	EPI Health, LLC	Assignment and Assumption Agreement by and between OptumRx, Inc., Aclaris Therapeutics, Inc. and EPI Health	11/26/2019	-
482	OptumRx, Inc.	EPI Health, LLC	Amendment to the Rebate Agreement by and between OptumRx, Inc. and EPI Health, LLC	8/1/2021	-
483	Oracle America, Inc.	Novan, Inc.	Oracle_Mutual NDA_FE_13Jun2022	6/13/2022	-
484	Oracle America, Inc.	Novan, Inc.	Oracle Netsuite_Mutual NDA_FE_13Jun2022	6/13/2022	-
485	Orion Corporation	Novan, Inc.	Orion_Quality Agreement Updated Oct 2019_FE_16Oct2019	8/16/2019	146,793
486	Orion Corporation	Novan, Inc.	Orion_Quinta_NDA 3-way_FE_6Feb2019	2/1/2019	-
487	Orion Corporation	Novan, Inc.	Orion_SOW 3_FE_12Jul2019	6/10/2019	-
488	Orion Corporation	Novan, Inc.	Orion_SOW1 TTA_FE_8Jan2019	1/8/2019	-
489	Orion Corporation	Novan, Inc.	Orion_SOW5_FE_6Nov2020	11/6/2020	-
490	Orion Corporation	Novan, Inc.	Orion_SOW 8_FE_23Jun2021	6/22/2021	-
491	Orion Corporation	Novan, Inc.	Orion_SOW9_FE_4Oct2021	9/27/2021	-

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492	Orion Corporation	Novan, Inc.	Orion_SOW9 Am1_FE_10Feb2022	2/4/2022	-
493	Orion Corporation	Novan, Inc.	Orion_SOW 10_FE_15Mar2022	3/7/2022	-
494	Orion Corporation	Novan, Inc.	Orion_Visitor NDA_FE_7Dec2021	12/7/2021	-
495	Orion Corporation	Novan, Inc.	Orion_SOW11_FE_11Nov2021	11/11/2021	-
496	Orion Corporation	Novan, Inc.	Orion_SOW14_FE_16Sept2022	9/16/2022	-
497	Orion Corporation	Novan, Inc.	Orion_SOW13_FE_14Jun2022	6/14/2022	-
498	Orion Corporation	Novan, Inc.	Orion_SOW12_FE_31May2022	5/27/2022	-
499	Orion Corporation	Novan, Inc.	Orion_Quality Agreement_FE_1Jun2022	5/31/2022	-
500	Orion Corporation	Novan, Inc.	Orion_Mutual NDA_Cilatus audit_FE_7Apr2022	4/7/2022	-
501	Orion Corporation	Novan, Inc.	Orion_SOW 10 Am1_FE_4Apr2022	4/4/2022	-
502	Orion Corporation	Novan, Inc.	Orion_SOW3 Am1_16Dec2019	12/12/2019	-
503	Orion Corporation	Novan, Inc.	Orion_SOW7_FE_22Mar2021	3/22/2021	-
504	Orion Corporation	Novan, Inc.	Orion_SOW16_FE_17May2023	5/17/2023	-
505	Orion Insurance Intermediaries, LLC	Novan, Inc.	Orion Insurance_Mutual NDA_FE_16Aug2021	8/13/2021	-
506	Pace Analytical Life Sciences	Novan, Inc.	Pace Analytical_Mutual NDA_FE_17Feb2023	2/17/2023	-
507	Packaging Compliance Labs, LLC	Novan, Inc.	Packaging Compliance Labs_Mutual NDA_FE_20Jul2021	5/20/2021	-
508	Paidion Research, Inc.	Novan, Inc.	Paidion_SOW1_FE_15Jul2019	7/12/2019	-
509	Paidion Research, Inc.	Novan, Inc.	Paidion Research_CO2_FE_13Dec2021	12/13/2021	-
510	Paidion Research, Inc.	Novan, Inc.	Paidion_CO1_SOW1_FE_2Apr2020	4/2/2020	-
511	Palmetto Parking, Inc.	Novan, Inc.	Palmetto Parking_Term Letter_FE_18May2023	2/28/2023	-
512	Patheon Austria GmbH & Co KG	Novan, Inc.	Patheon_Cilatus_3-way NDA_FE_22Sept2020	9/22/2020	-
513	Patheon Austria GmbH & Co KG	Novan, Inc.	Patheon_Proposal Am1_FE_7Jan2022	12/17/2021	-
514	Patheon Austria GmbH & Co KG	Novan, Inc.	Patheon_UDSA_FE_19Jul2021	7/15/2021	-
515	Patheon Austria GmbH & Co KG	Novan, Inc.	Patheon_SOW1_FE_19Jul2021	7/15/2021	-
516	Pathward National Association	Novan, Inc.	Pathward_NDA_FE_23Sept2022	9/23/2022	-
517	Patrick R. Coyle	Novan, Inc.	Coyle_Patrick_CSA_FE_7Nov2022	11/7/2022	-
518	Paustenbach & Associates	Novan, Inc.	Paustenbach & Associates_Mutual NDA_FE_12May2023	5/12/2023	-
519	Paycom	Novan, Inc.	Paycom_General T&Cs_FE_22Mar2022	3/22/2022	-
520	Paycom	Novan, Inc.	Paycom_Proposal transfer EPI Health_FE_21Apr2022	4/21/2022	-
521	PCI	Novan, Inc.	PCI_MSA Am3_FE_5Oct2022	8/12/2021	-
522	PCI	Novan, Inc.	PCI_SOW CPR22334_FE_16May2022	5/16/2022	-
523	PCI	Novan, Inc.	PCI_SOW CPR23103_00_FE_22Feb2023	2/7/2023	-
524	PCI	Novan, Inc.	PCI_SOW CPR21256_02_FE_2Jun2021	5/27/2021	-
525	PCI	Novan, Inc.	PCI_CPR21173_00_FE_2Mar2021	2/23/2021	-
526	PCI	Novan, Inc.	PCI_CPR21096_01_FE_2Mar2021	3/2/2021	-
527	Pearl Kwong MD PLLC	Novan, Inc.	Dr Pearl Kwong Md Pllc_MCSA_FE	3/14/2023	-
528	Pediatric Dermatology Research Alliance, Inc.	Novan, Inc.	PeDRA Sponsorship Agreement	1/1/2023	-
529	Pertinent Animal Health, Inc.	Novan, Inc.	Pertinent Animal Health_Mutual NDA_FE_28Jul2020	7/28/2020	-
530	Petrichor Healthcare Capital Management LP	Novan, Inc.	Petrichor_NDA_FE_19Oct2022	1/17/2022	-
531	Petrichor Healthcare Capital Management LP	Novan, Inc.	Petrichor_Mutual NDA_FE_6Mar2023	3/6/2023	-
532	Phil, Inc.	Novan, Inc.	Phil_Mutual NDA_FE_18Nov2022	11/18/2022	-
533	Phillips Architecture, PA	Novan, Inc.	Phillips Architecture_Mutual NDA_FE_5Aug2020	8/4/2020	-
534	Physician Resources, LLC	Novan, Inc.	Physician Resources_MSA_FE_29Nov2021	11/29/2021	-
535	Pixacore	Novan, Inc.	Pixacore_Mutual NDA_FE_18Nov2022	11/18/2022	-
536	Plotline Leadership	Novan, Inc.	Plotline Leadership_Mutual NDA_FE_2Aug2021	7/29/2021	-
537	PNC Bank	Novan, Inc.	PNC_Mutual NDA_FE_30Jun2022	6/30/2022	-
538	PoC Capital, LLC	Novan, Inc.	PoC Capital_Transaction NDA_FE_25Oct2021	10/25/2021	-
539	Pope Scientific, Inc.	Novan, Inc.	Pope Scientific, Inc.	8/21/2020	-
540	PPD Development, L.P.	EPI Health, LLC	Master Laboratory Services Agreement, dated February 21, 2020	2/21/2020	82,240
541	PPD Development, L.P.	EPI Health, LLC	Stability Storage and Analysis of Rhofade, dated May 5, 2020	5/5/2020	-
542	PPD Development, L.P.	EPI Health, LLC	Release Testing and Stability Storage and Analysis of Rhofade, dated November 13, 2019.	11/13/2019	-
543	PPD Development, L.P.	EPI Health, LLC	Release Testing of Rhofade, dated February 14, 2020.	2/14/2020	-
544	Prasco, LLC	EPI Health, LLC	Distribution and Supply Agreement by and between EPI Health, LLC and Prasco, LLC	9/28/2018	-
545	Precision Stability Storage, L.L.C.	Novan, Inc.	Precision Stability Storage_MSA_FE_17Aug2022	8/17/2022	12,258
546	Precision Stability Storage, L.L.C.	Novan, Inc.	Precision Stability Storage_Quality Agreement_FE_30Aug2022	8/30/2022	-
547	Premier Medical Partners, LLC	Novan, Inc.	Premier Research_CNF_SOW1_FE_21Feb2019	2/7/2019	-
548	Premier Medical Partners, LLC	Novan, Inc.	Premier Research_CNF11_SOW1_FE_11Jan2019	1/2/2019	-
549	Premier Medical Partners, LLC	Novan, Inc.	Premier Research_CNF13_SOW1_FE_4Apr2019	4/4/2019	-
550	Premier Medical Partners, LLC	Novan, Inc.	7332_Premier_MC201_Amend3_SOW1_FE_18Jun2019	5/30/2019	-

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551	Price Forbes & Partners (Bermuda Ltd)	Novan, Inc.	Price Forbes_Mutual NDA_FE_16Aug2021	8/16/2021	-
552	Priyanka Vedak	Novan, Inc.	Vedak_Priyanka_Confidentiality Assignment of Inventions_FE_2Jan2019	1/1/2019	-
553	Process Service S.r.l.	Novan, Inc.	Process Service_Huvepharma_NDA IP Assignment_FE_28May2021	5/28/2021	-
554	Progenicyte Therapeutics, Inc.	Novan, Inc.	Progenicyte_Mutual NDA_FE_17Feb2023	2/17/2023	-
555	Project Farma LLC	Novan, Inc.	Project Farma_Mutual NDA_FE_29Sept2021	9/29/2021	-
556	Promius Pharma	EPI Health, LLC	Bill of Sale and Assignment and Assumptino Agreement by and between Promius Pharma LLC and EPI Health	9/28/2018	-
557	Promius Pharma	EPI Health, LLC	Transition Services Agreement between Promius Pharma, LLC and EPI Health LLC	9/28/2018	-
558	Promius Pharma, Dr. Reddy's	EPI Health, LLC	Asset Purchase Agreement between Promius Pharma, LLC, Dr. Reddy's Laboratories Inc. and EPI Health	9/28/2018	-
559	Protean LLC	Novan, Inc.	Protean_Mutual NDA_FE_26Oct2021	10/26/2021	-
560	P-Square Marketing LLC	Novan, Inc.	P-Square_Mutual NDA_FE_20Jul2021	7/19/2021	-
561	Pulmodyne Inc.	Novan, Inc.	Pulmodyne_Letter_FE_31Jan2022	1/31/2022	-
562	PurePipe Systems, LLC	Novan, Inc.	PurePipe Systems_Mutual NDA_FE_16Feb2021	2/16/2021	-
563	Q2 Solutions	Novan, Inc.	Q2_Vast permission letter_FE_23Sept2022	9/23/2022	-
564	Qpharma	EPI Health, LLC	Master Services Agreement by and between QPharma, Inc. and EPI Health, LLC	8/19/2019	22,730
565	Qpharma	EPI Health, LLC	Statement of Work Direct-to-Rep (DTR) Fulfillment by and between QPharma, Inc. and EPI Health, LLC	7/15/2019	-
566	Qpharma	EPI Health, LLC	Amendment to Statement of Work Direct-to-Rep (DTR) Fulfillment by and between QPharma, Inc.	10/25/2022	-
567	Qpharma	EPI Health, LLC	Statement of Work Direct-to-Practitioner (DTP) Fulfillment by and between QPharma, Inc. and EPI Health	7/15/2019	-
568	Qpharma	EPI Health, LLC	Amendment to Statement of Work Direct-to-Practitioner (DTP) Fulfillment by and between QPharma, Inc.	10/25/2022	-
569	Qpharma	EPI Health, LLC	Statement of Work Warehousing and Fulfillment by and between QPharma, Inc. and EPI Health, LLC	7/15/2019	-
570	Qpharma	EPI Health, LLC	Amendment to Statement of Work Warehousing and Fulfillment by and between QPharma, Inc. and EPI Health	10/25/2022	-
571	Qpharma	EPI Health, LLC	Statement of Work Shared Services by and between QPharma, Inc. and EPI Health, LLC	7/15/2019	-
572	Qpharma	EPI Health, LLC	Amendment to Statement of Work Shared Services by and between QPharma, Inc. and EPI Health, LLC	10/25/2022	-
573	QPS Holdings, LLC	Novan, Inc.	QPS_Mutual NDA_FE_7Sept2021	9/7/2021	-
574	Quality Associates, Inc.	Novan, Inc.	Quality Associates Inc_SOW 2_FE_3Mar2021	3/3/2021	-
575	Quality Resource Solutions, LLC	Novan, Inc.	Quality Resource Solutions_SOW_GLP Audits_FE_23Sept2019	8/9/2019	-
576	Quality Resource Solutions, LLC	Novan, Inc.	Quality Resources_SOW MC Site Audit_FE_5Jun2019	5/23/2019	-
577	Quanticate International Limited	Novan, Inc.	Quanticate International Limited	7/12/2021	-
578	Radius Health, Inc.	Novan, Inc.	Radius Health, Inc.	8/17/2020	-
579	Red Nucleus	EPI Health, LLC	MSA in Novan, but likely some SOWs in EPI	TBD	-
580	Red Nucleus Solutions LLC	Novan, Inc.	Red Nucleus_MSA_FE_20Jul2022	7/20/2022	-
581	Reedy Creek Investments	EPI Health, LLC	Royalty and Milestone Payments Purchase Agreement, dated April 29, 2019, by and between Nova	4/29/2019	-
582	Reedy Creek Investments LLC	Novan, Inc.	Reedy Creek_Royalty and Milestone Purchase Agreement_FE_30Apr2019	4/29/2019	-
583	Reedy Creek Investments LLC	Novan, Inc.	Reedy Creek_Mutual NDA_FE_13Jul2023	7/13/2023	-
584	Regan Madison Inc.	Novan, Inc.	Reagan-Madison_Consulting and Placement Agreement_FE_29Sept2022	9/29/2022	16,875
585	Regina Brown	Novan, Inc.	Regina Brown_MCSA_FE	3/14/2023	-
586	Research Triangle Institute	Novan, Inc.	RTI_SOW10_FE_15Oct2019	10/3/2019	18,148
587	Research Triangle Institute	Novan, Inc.	RTI_SOW9_FE_26Jun2019	6/18/2019	-
588	Research Triangle Institute	Novan, Inc.	RTI_SOW Am1_FE_4Sept2020	9/22/2020	-
589	Research Triangle Institute	Novan, Inc.	RTI_MSA_03May2020	5/3/2020	-
590	Research Triangle Institute	Novan, Inc.	RTI_MC304 Consulting Agreement_08May2020	5/8/2020	-
591	Research Triangle Institute	Novan, Inc.	RTI_SOW NDMA Method_FE_30Nov2022	11/30/2022	-
592	Research Triangle Institute	Novan, Inc.	RTI_Proposal 0372100.413 Am2_FE_6Oct2021	10/6/2021	-
593	Research Triangle Institute	Novan, Inc.	RTI_SOW Method Dev 2_FE_16Feb2023	2/16/2023	-
594	Research Triangle Institute	Novan, Inc.	RTI International_SOW Method Dev 3_FE_16May2023	5/16/2023	-
595	Riverstone Technology, LLC	Novan, Inc.	Riverstone_Quote_FE_8Nov2021	11/4/2021	-

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596	RKH Specialty	Novan, Inc.	RKH Specialty_Mutual NDA_FE_22Jul2020	7/22/2020	-
597	Robert Half Management Resources	Novan, Inc.	Robert Half_SOW_Deidre Simmons_FE_27Jan2023	1/19/2023	-
598	Rose Marie Doty	Novan, Inc.	Doty_Rose Marie_Mutual NDA_FE_29Nov2022	11/29/2022	-
599	RSG Underwriting Managers Eurpe Limited trading as StartPoint Executive Risks	Novan, Inc.	StartPoint_Mutual NDA_FE_22Jul2020	7/22/2020	-
600	Safe Property Maintenance and Cleaning Specialist	Novan, Inc.	Safe Property Maintenance and Cleaning Specialist_One Way NDA_FE_18Nov2021	11/18/2021	-
601	Safebridge Consultants Inc.	Novan, Inc.	SafeBridge_SOW4_FE_13Jun2023	6/13/2023	-
602	Safety Management Services, Inc	Novan, Inc.	Safety Management Services_MSA Am1 Rein_FE_20Jul2021	3/22/2019	-
603	Safety Management Services, Inc	Novan, Inc.	Safety Management Services_SOW2_FE_20Jul2021	7/7/2021	-
604	Safety Management Services, Inc	Novan, Inc.	Agreement effective March 22, 2019 (hereinafter referred to as the "Agreement"), as amended;	7/28/2021	-
605	Safety Management Services, Inc	Novan, Inc.	SMS_SOW 4_FE_20Jan2022	1/20/2022	-
606	SafetyCall International	EPI Health, LLC	Service Agreement	TBD	8,106
607	Sage Intacct, Inc.	Novan, Inc.	Sage Intacct_Mutual NDA_FE_14Jun2022	6/14/2022	-
608	Saineolai LLC	Novan, Inc.	Saineolai_CSA_FE_30Sept2020	10/1/2020	8,600
609	SAP America, Inc.	Novan, Inc.	SAP_Service Agreement_FE_30Dec2022	12/29/2022	184,677
610	Sarah T Arron MD PhD	Novan, Inc.	Arron_Sarah_CSA Termination_FE_22Jan2020	1/8/2020	-
611	Sato Pharmaceutical Co. Ltd.	Novan, Inc.	Sato_Rhofade_Mutual NDA_FE_1Aug2022	8/1/2022	-
612	Sato Pharmaceutical Co., Ltd.	EPI Health, LLC	License Agreement, dated January 12, 2017, by and between Novan, Inc. and Sato Pharmaceutica	1/12/2017	-
613	Sato Pharmaceutical Co., Ltd.	EPI Health, LLC	License Agreement, effective December 21, 2022, by and between Sato Pharmaceutical Co., Ltd.	1/21/2022	-
614	Schneider Electric Buildings Americas, Inc.	Novan, Inc.	Schneider Electric_Quote_FE_2Dec2021	12/2/2021	-
615	Schneider Electric Buildings Americas, Inc.	Novan, Inc.	Schneider_Mutual NDA_FE_18Nov2021	11/18/2021	-
616	Scottsdale Indemnity Company, Scottsdale Insurance Company, National Casualty Company, Freedom Specialty Insurance Company and Scottsdale Surplus Lines Insurance Company	Novan, Inc.	Scottsdale Insurance_NDA_FE_12Aug2021	8/12/2021	-
617	Scullion Strategy Group, LLC	Novan, Inc.	Scullion Strategy Group_Mutual NDA_FE_17Sept2020	9/17/2020	-
618	Scullion Strategy Group, LLC	Novan, Inc.	Scullion Strategy Group_MCSA_FE_17Dec2020	12/17/2020	-
619	Scullion Strategy Group, LLC	Novan, Inc.	Dechra_Scullion_3way NDA_FE_9Jun2021	6/9/2021	-
620	Sebela Internaitonal Limited	Novan, Inc.	Sebela_Mutual NDA_FE_15Apr2022	4/15/2022	-
621	SelectHealth, Inc.	EPI Health, LLC	Health Plan Rebate Agreement by and between SelectHealth Care and EPI Health,	1/1/2020	4,658
622	SelectHealth, Inc.	EPI Health, LLC	First Amendment to the Commercial Drug Rebate Agreement by and between SelectHealth Inc. and EPI Health	1/1/2022	-
623	SGS North America Inc	Novan, Inc.	SGS_Mutual NDA_FE_6Jun2019	5/14/2019	-
624	SGS North America Inc	Novan, Inc.	SGS_Mutual NDA Am2_FE_14May2022	5/14/2022	-
625	Shahriari LLC	Novan, Inc.	Shahriari Llc_MCSA_FE	3/14/2023	-
626	SIA Olivry Consulting	Novan, Inc.	Olivry Consulting_Mutual NDA_FE_11Sept2020	9/10/2020	-
627	Skin Sciences, PLLC	Novan, Inc.	Skin Sciences, Pllc_MCSA_FE	3/14/2023	-
628	Skin Sciences, PLLC	EPI Health, LLC	Master Services Agreement by and between Skin Sciences, PLLC, and EPI Health, LLC	10/4/2021	650
629	Skin Sciences, PLLC	EPI Health, LLC	CSA	TBD	-
630	SMART Health Partners	EPI Health, LLC	CSA	TBD	-
631	SMART Health Partners, LLC	Novan, Inc.	SMART Health Partners_Mutual NDA_FE_18Nov2022	11/18/2022	-
632	SMART Health Partners, LLC	Novan, Inc.	SMART Health Partners_MSA_FE_12Jan2023	1/12/2023	-
633	Sonitrol Integrated Security	Novan, Inc.	Sonitrol_Security System Agreement_FE_26Feb2021	2/26/2021	-
634	Sonitrol Integrated Security	Novan, Inc.	Sonitrol_WO_FE_13May2021	5/13/2021	-
635	Spaulding Clinical Research, LLC	Novan, Inc.	Spaulding_OOS Agreement_FE_19Jan2022	1/13/2022	-
636	Sterling Pharma Solutions Ltd.	Novan, Inc.	Sterling Pharma_Mutual NDA_FE_8Dec2021	12/8/2021	-
637	Steven D. Skolsky	Novan, Inc.	MUTUAL NONDISCLOSURE AGREEMENT	2/4/2021	13,657
638	Storr Office Environments	Novan, Inc.	Storr_Mutual NDA_FE_23Nov2020	11/23/2020	-
639	Storr Office Environments	Novan, Inc.	Storr_Quote_FE_22Mar2021	3/22/2021	-
640	Surplus Solutions, LLC	Novan, Inc.	Surplus Solutions_MSA_FE_8Jul2020	7/8/2020	-
641	Surplus Solutions, LLC	Novan, Inc.	Surplus Solutions_Transaction Summary_FE_9Jul2020	7/9/2020	-
642	Surplus Solutions, LLC	Novan, Inc.	Surplus Solutions_Transaction Summary Addendum 1.1_FE_31Jul2020	7/31/2020	-
643	Sway UX, LLC.	Novan, Inc.	Sway_Termination Agreement_FE_31Mar2022	3/31/2022	-
644	SWK Holdings Corporation	Novan, Inc.	SWK Holdings_NDA_FE_6Oct2022	10/6/2022	-
645	Sycamore Financial Consulting, LLC	Novan, Inc.	Sycamore Financial Consulting_CSA_FE_9Jun2023	6/9/2023	2,100
646	Synchrogenix Information Strategies	Novan, Inc.	Synchrogenix_NDA and DMF Submission Services_SB206_FE_19Dec2019	12/20/2019	-



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647	Synchrogenix Information Strategies	Novan, Inc.	Certara_Synchrogenix_SOW5_FE_11May2023	5/11/2023	-
648	Syneos Health Commercial Services, LLC	Novan, Inc.	Syneos Health_WO 7040201_PE_28Apr2022	4/26/2022	201,165
649	Syneos Health Commercial Services, LLC	Novan, Inc.	Syneos Health_WO 7037905_CO2_FE_12May2022	5/12/2022	-
650	Syneos Health Commercial Services, LLC	Novan, Inc.	Syneos Health_SOW 7046210_FE_2Dec2022	12/1/2022	-
651	Syneos Health Commercial Services, LLC	Novan, Inc.	Syneos_WO 7033034_Am1_FE_10Jan2022	1/10/2022	-
652	Syneos Health Commercial Services, LLC	Novan, Inc.	Syneos Health_CO1_SOW_Addison Whitney_FE_13Jan2022	1/13/2022	-
653	Synerfac Technical Staffing	Novan, Inc.	Synerfac Technical Staffing_DH Staffing Agreement_FE_25Feb2021	2/25/2021	-
654	Synerfac Technical Staffing	Novan, Inc.	Synerfac_Mutual NDA_FE_1Mar2021	3/1/2021	-
655	Synerfac Technical Staffing	Novan, Inc.	Synerfac_Contract to Hire_FE_10Jun2021	6/10/2021	-
656	Synergistix	EPI Health, LLC	CRM Agreement	TBD	39,044
657	Syneract, Inc.	Novan, Inc.	Syneract_(NI-MC301)_WO1_CO1_FE_1Jul2019	7/1/2019	13,375
658	Syneract, Inc.	Novan, Inc.	Syneract_(NI-MC302)_WO2_CO1_FE_1Jul2019	7/1/2019	-
659	Syneract, Inc.	Novan, Inc.	Syneract_CNF3_FE_3Jul2019	7/2/2019	-
660	Syneract, Inc.	Novan, Inc.	Syneract_NI-MC301_WO1-CNF04_FE_23Jul2019	7/22/2019	-
661	Syneract, Inc.	Novan, Inc.	Syneract_Novan_Novan-02591_NI-MC301_LOI Amendment 1_FE_01Apr2019	4/1/2019	-
662	Syneract, Inc.	Novan, Inc.	Syneract_Novan_Novan-02592_NI-MC302_LOI Amendment 1_FE_01Apr2019	4/1/2019	-
663	Syneract, Inc.	Novan, Inc.	Novan_02591_(NI-MC301)_WO1_8May2019_FE	2/11/2019	-
664	Syneract, Inc.	Novan, Inc.	Novan_02592_(NI-MC302)_WO2_8May2019_FE	2/11/2019	-
665	Syneract, Inc.	Novan, Inc.	NI-MC-301_Gremillion_30May2019_FE CTA	1/1/2019	-
666	Syneract, Inc.	Novan, Inc.	NI-MC302_USA_309_CTA_Oregon Medical Research_Ehst_FE_17June2019	1/1/2019	-
667	Syneract, Inc.	Novan, Inc.	Novan Inc._NOVA-USA02591_(NI-MC301)_WO1-CNF02_FE_14Jun2019	6/14/2019	-
668	Syneract, Inc.	Novan, Inc.	Syneract_MCRO Am1_FE_10Feb2021	2/10/2021	-
669	Syneract, Inc.	Novan, Inc.	Syneract_SOW ISS/ISE_FE_22Oct2021	10/22/2021	-
670	Syneract, Inc.	Novan, Inc.	Syneract_WO_MC304_FE_11Aug2020	5/15/2020	-
671	Syneract, Inc.	Novan, Inc.	Syneract_CO2_SOW1_FE_4Aug2020	7/31/2020	-
672	Syneract, Inc.	Novan, Inc.	Syneract_CO2_SOW2_MC302_FE_4Aug2020	7/31/2020	-
673	Taro Pharmaceutical Industries Ltd.	Novan, Inc.	Taro_Novan Mutual NDA_FE_12Jul2021	6/30/2021	-
674	TBC Stirrup Creek JV LLC	Novan, Inc.	AMENITIES CENTER LICENSE AGREEMENT (the "Agreement"), dated as of December	12/22/2022	-
675	TD Ameritrade Inc.	Novan, Inc.	TD Ameritrade_Term Agreement_FE_6May2022	5/6/2022	-
676	Technical Safety Services, LLC	Novan, Inc.	Technical Safety Services_MSA_FE_27Oct2021	10/27/2021	39,920
677	Technical Safety Services, LLC	Novan, Inc.	TSS_SOW2_FE_1Jan2023	1/1/2023	-
678	Technical Safety Services, LLC	Novan, Inc.	TSS_SOW2_FE_1May2023	1/1/2023	-
679	Technical Safety Services, LLC	Novan, Inc.	TSS_SOW4_PE_7Jul2023	7/6/2023	-
680	TECSA S.r.l.	Novan, Inc.	TECSA_Huvepharma_NDA IP Assignment_FE_27May2021	5/27/2021	-
681	Tegra Analytics, LLC	Novan, Inc.	Tegra Analytics_MSA_FE_9Dec2022	11/10/2022	-
682	Tegra Analytics, LLC	EPI Health, LLC	MSA & 2 SOWs	TBD	44,000
683	Tergus Pharma	Novan, Inc.	Tergus Pharma_WO1_CO2_FE_11Aug2020	8/4/2020	95,101
684	Tergus Pharma	Novan, Inc.	Tergus Pharma_WO 2_FE_7Jul2020	6/30/2020	-
685	Tergus Pharma	Novan, Inc.	Tergus Pharma_CO1_SOW1_FE_6Jul2020	7/7/2020	-
686	Tergus Pharma	Novan, Inc.	Tergus_WO7_FE_4Dec2020	12/4/2020	-
687	Tergus Pharma	Novan, Inc.	Tergus_MC304 Stability Testing Work Order_08May2020	5/8/2020	-
688	Tergus Pharma	Novan, Inc.	Tergus Pharma_SOW 1 CO5_FE_15Jun2022	6/15/2022	-
689	Tergus Pharma	Novan, Inc.	CONTRACT	2/14/2023	-
690	Tergus Pharma	Novan, Inc.	Tergus Pharma_Quality Agreement_FE_25Oct2022	10/21/2022	-
691	Tergus Pharma	Novan, Inc.	Tergus Pharma_WO11_FE_24Feb2021	2/24/2021	-
692	Tergus Pharma	Novan, Inc.	Tergus Pharma_WO15_FE_25Jun2021	6/25/2021	-
693	Tergus Pharma	Novan, Inc.	Tergus Pharma_SOW 1 CO4_FE_18Oct2021	10/5/2021	-
694	Tergus Pharma	Novan, Inc.	Tergus Pharma_MSA Am2_FE_10Nov2021	11/1/2021	-
695	Tergus Pharma	Novan, Inc.	Tergus_WO17_FE_9Mar2022	3/8/2022	-
696	Tergus Pharma	Novan, Inc.	Tergus Pharma_WO11_FE_24Feb2021	2/24/2023	-
697	TFF Pharmaceuticals, Inc.	Novan, Inc.	TFF Pharmaceuticals_Mutual NDA_FE_4Sept2020	9/2/2020	-
698	The Activus Group, LLC	EPI Health, LLC	SOW	TBD	25,850
699	The CIT Group/Commercial Services, Inc.	Novan, Inc.	CIT Group_Mutual NDA_FE_6Jul2022	7/6/2022	-
700	The Dermatology and Skin Care Center of Birmingham	Novan, Inc.	The Dermatology And Skin Care Center Of Birmingham_MCSA_FE	3/14/2023	1,300
701	The FDA Group, LLC	Novan, Inc.	FDA Group_SOW1_FE_14Jul2022	7/14/2022	-
702	The FDA Group, LLC	Novan, Inc.	FDA Group_MSA_FE_14Jul2022	7/14/2022	-
703	The Hackett Group Inc. dba Answerthink	Novan, Inc.	Answerthink_Mutual NDA_FE_11May2022	5/11/2022	-
704	The Harel Group, Inc.	Novan, Inc.	The Harel Group_Mutual NDA_FE_24Aug2022	8/24/2022	-
705	The M&P Lab Inc. dba Lucideon M+P	Novan, Inc.	Lucideon_Mutual NDA_FE_3May2022	5/2/2022	-
706	The University of Alabama at Birmingham	Novan, Inc.	UAB_LOI_CDMRP Grant_FE_19Mar2019	3/18/2019	-

## Exhibit 1: Contract Schedule

ID #	Contract Counterparty	Debtor Name	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
707	Therapeutics, Inc.	Novan, Inc.	Therapeutics Inc. SOW1_FE_11Aug2020	6/15/2020	9,950
708	Therapeutics, Inc.	Novan, Inc.	Therapeutics Inc SOW4_FE_15Mar2022	3/8/2022	–
709	Therapeutics, Inc.	Novan, Inc.	Therapeutics_Inc_SOW1_CO3_PE_16Jul2021	5/24/2021	–
710	Thomas M Hamilton Jr	EPI Health, LLC	CSA	TBD	–
711	Thomas Selby	Novan, Inc.	Thomas Selby_MCSA_FE	3/14/2023	–
712	TimelyText, Inc.	Novan, Inc.	TimelyText_MSA_FE_16Feb2023	2/16/2023	1,800
713	Tracelink	EPI Health, LLC	SOW	TBD	–
714	Tradebe Environmental Services, LLC	Novan, Inc.	Tradebe Environmental_MSA_FE_9Jul2020	7/9/2020	–
715	Tradebe Environmental Services, LLC	Novan, Inc.	Tradebe_Quote 17197_FE_15Mar2021	3/9/2021	–
716	Triad Securities Corp	Novan, Inc.	Triad Securities Corp_Mutual NDA_FE_8Mar2021	3/8/2021	–
717	Triangle Certification LLC	Novan, Inc.	Triangle Certification_SOW2_FE_1Mar2019	3/1/2019	–
718	Truveris	EPI Health, LLC	Truveris Master Services Agreement by and between Truveris, Inc. and EPI Health	3/26/2020	5,912,880
719	Truveris	EPI Health, LLC	Statement of Work #1 to Master Services Agreement by and between Truveris Inc. and EPI Health	3/26/2020	–
720	Truveris	EPI Health, LLC	Amendment 1 to Statement of Work #1 to Master Services Agreement dated March 26, 2020	8/12/2020	–
721	Truveris	EPI Health, LLC	Amendment 2 to Statement of Work #1 to Master Services Agreement dated March 26, 2020	12/7/2020	–
722	Truveris	EPI Health, LLC	Amendment 3 to Statement of Work #1 to Master Services Agreement dated March 26, 2020	1/22/2021	–
723	Truveris	EPI Health, LLC	Statement of Work #5 to Master Services Agreement by and between Truveris Inc. and EPI Health	11/8/2022	–
724	TUV SUD Schweiz AG	Novan, Inc.	TUV SUD_MSA_FE_12Nov2020	10/28/2020	–
725	TUV SUD Schweiz AG	Novan, Inc.	TUV SUD_Mutual NDA_FE_27Oct2020	10/27/2020	–
726	Two Labs Holdings, LLC	Novan, Inc.	Two Labs Holdings_Mutual NDA_FE_4Oct2021	10/4/2021	10,000
727	Two Labs Holdings, LLC	Novan, Inc.	Two Labs Holdings_MSA_FE_19Nov2021	11/19/2021	–
728	Two Labs Holdings, LLC	Novan, Inc.	Two Labs_SOW1_FE_10Dec2021	12/10/2021	–
729	Two Labs Holdings, LLC	Novan, Inc.	Two Labs_SOW1_FE_10Dec2021	12/10/2021	–
730	Two Labs Holdings, LLC	Novan, Inc.	Two Labs_SOW2_FE_10Dec2021	12/10/2021	–
731	UNC Chapel Hill	Novan, Inc.	UNC-CH_NMR Lab Agreement_FE_8May2023	5/8/2023	50,063
732	United States Fire Insurance Company	Novan, Inc.	Crum and Forster_Mutual NDA_FE_16Aug2021	8/13/2021	–
733	University of North Carolina	EPI Health, LLC	Amended, Restated and Consolidated License Agreement between The University of North Carolin	6/27/2012	–
734	University of Rochester	Novan, Inc.	University of Rochester_Brian Ward_Mutual NDA_FE_14Dec2021	12/14/2021	–
735	University of Rochester	Novan, Inc.	University of Rochester_Research Agreement_FE_6Jun2022	6/6/2022	–
736	University of South Carolina	Novan, Inc.	USC_MTA_FE_9Jun2022	6/17/2022	–
737	University of Tennessee	Novan, Inc.	UT_Scullion Strategy_Mutual NDA 3 way_FE_13Jan2021	1/8/2021	–
738	USI Insurance Services National	Novan, Inc.	USI Insurance_Mutual NDA_FE_25Jan2022	1/25/2022	–
739	Utah State University	Novan, Inc.	USU_SSA6_FE_15Jul2022	7/15/2022	–
740	Vaco LLC	Novan, Inc.	Vaco_Client Services Agreement_FE_1Nov2021	10/29/2021	–
741	Varidesk LLC	Novan, Inc.	Varidesk_Release Agreement_FE_8Mar2021	3/8/2021	–
742	Varidesk LLC	Novan, Inc.	Vari_Quote_FE_22Mar2021	1/21/2021	–
743	vCom Solutions	Novan, Inc.	vCom Solutions_MSA_FE_16Feb2021	2/16/2021	528
744	vCom Solutions	Novan, Inc.	vCom Solutions_LOA_FE_15Mar2021	3/15/2021	–
745	Vectans Pharma	EPI Health, LLC	Safety Data Exchange Agreement between Vectans Pharma SCS and EPI Health, LLC	5/30/2018	(200)
746	Vectans Pharma	EPI Health, LLC	Transfer and License Agreement between Vectans Pharma and EPI Health LLC	2/21/2020	–
747	Vectans Pharma	EPI Health, LLC	Quality Agreement by and between EPI Health, LLC and Vectans Pharma, dated August 30, 2018.	8/30/2018	–
748	Verta Life Sciences LLC	Novan, Inc.	Verta Life Sciences_Mutual NDA_FE_22Sept2021	9/22/2021	27,300
749	Verta Life Sciences LLC	Novan, Inc.	“Effective Date”) under the Master Services Agreement dated as of April 15’, 2022 (the “Agreement”)	4/28/2022	–
750	Verta Life Sciences LLC	Novan, Inc.	“Effective Date”) under the Master Services Agreement dated as of April 15’, 2022 (the “Agreement”)	4/28/2022	–
751	Verta Life Sciences LLC	Novan, Inc.	Verta Life Sciences_SOW2_FE_29Aug2022	8/29/2022	–
752	Verta Life Sciences LLC	Novan, Inc.	Verta Life Sciences_MSA_FE_4Apr2022	4/1/2022	–
753	Vicept Therapeutics, Inc. & Aspect Pharmaceuticals, LLC	EPI Health, LLC	Assignment and License Agreement dated as of August 3, 2009, by and between Vicept Therapeutics, Inc	8/3/2009	–
754	Vinchem, Inc. & Coria Laboratories	EPI Health, LLC	Supply Agreement by and between Vinchem, Inc. and Coria Laboratories Ltd.	4/30/2008	–
755	Vorenius Ventures LLC	Novan, Inc.	Mobile Locker_Mutual NDA_FE_9Nov2022	11/9/2022	–

## Exhibit 1: Contract Schedule

ID #	Contract Counterparty	Debtor Name	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
756	VTU Engineering Italia S.r.l.	Novan, Inc.	VTU Engineering_Huvepharma_NDA IP Assignment_FE_27May2021	5/27/2021	-
757	Warman OBrien Limited	Novan, Inc.	Warman O'Brien Limited_Terms of Business_FE_18Aug2021	1/8/2021	-
758	Wavelength Enterprises LTD	Novan, Inc.	Wavelength_Cilatus_3-way NDA_FE_25Sept2020	9/25/2020	-
759	West LLC	Novan, Inc.	Nasdaq_West LLC_Service Order_FE_16Aug2019	7/22/2019	-
760	Womble Bond Dickinson (US) LLP	Novan, Inc.	Womble Bond Dickinson_Engagement Letter_FE_24Mar2022	3/24/2022	-
761	Womble Bond Dickinson (US) LLP	Novan, Inc.	Womble Bond Dickinson_Waiver of Conflict_FE_30Mar2022	3/30/2022	-
762	Woodward Pharma Services LLC	Novan, Inc.	Woodward Pharma_Mutual NDA_FE_6Jun2023	6/6/2023	-
763	World Customs Brokerage, Inc.	Novan, Inc.	World Customs Brokerage_POA_FE_22Jun2022	6/22/2022	-
764	Yocom & McKee, Inc.	Novan, Inc.	Yocom & McKee_EEO-1 Service Agreement_FE_6Feb2023	2/6/2023	1,938
765	Yocom & McKee, Inc.	Novan, Inc.	Yocom & McKee_AAP Services Agreement_FE_1Jan2023	1/1/2023	-
766	Zeichner Consulting LLC	Novan, Inc.	Zeichner Consulting Llc_MCSA_FE	2/24/2023	-
767	ZETA USA Inc	Novan, Inc.	Zeta_MSA_FE_22Apr2023	4/22/2023	2,400
768	Zhendong BioPharma International, LLC	Novan, Inc.	Zhendong BioPharma_Mutual NDA_FE_30Jan2023	1/30/2023	-
769	Zinc	EPI Health, LLC	Commercial Rebate Agreement by and between Zinc Health Services, LLC and EPI Health	1/1/2021	-
770	Zinc	EPI Health, LLC	First Amendment to Commercial Rebate Agreement by and between Zinc Health Services, LLC and EPI Health	7/1/2021	-
771	Zinc	EPI Health, LLC	Second Amendment to Commercial Rebate Agreement by and between Zinc Health Services, LLC and EPI Health	1/1/2022	-

**Exhibit B**

**(Ligand Sale Order)**

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

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
Debtors. )  
 ) (Jointly Administered)  
 )  
 ) **Re: D.I. 16 and 166**  
 )

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**ORDER (I) APPROVING ASSET PURCHASE AGREEMENT, (II) AUTHORIZING THE SALE OF THE DEBTORS' DEVELOPMENT ASSETS AND CERTAIN OF THE COMMERCIAL ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES TO LIGAND PHARMACEUTICALS, INCORPORATED, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”) of the above-captioned debtors and debtors-in-possession (the “**Debtors**”) in their chapter 11 cases (the “**Chapter 11 Cases**”), pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”), rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 2002-1, 6004-1, and 9006-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for entry of an order (the “**Order**”): (i) approving that certain asset purchase agreement, dated as of July 17, 2023, by and among Debtors Novan, Inc. and EPI Health, LLC, as Sellers,<sup>2</sup> and one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee, as Buyer (including all exhibits, annexes and schedules related thereto, and as the same may be amended from time to time in accordance

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the Purchase Agreement, as applicable.

with the terms thereof, the “**Purchase Agreement**”), a copy of which attached hereto as **Exhibit A**, (ii) authorizing and approving the sale of the Debtors’ Development Assets and Assumed Commercial Business Assets (as each term is defined in the Purchase Agreement, the “**Purchased Assets**”), free and clear of claims, liens, encumbrances, and other interests, and the consummation of all other transactions contemplated by the Purchase Agreement (collectively, the “**Sale**”), (iii) authorizing and approving the assumption and assignment of the Debtors’ Assumed Contracts<sup>3</sup> as set forth in the Purchase Agreement, and (iv) granting related relief; the United States Bankruptcy Court for the District of Delaware (the “**Court**”) having entered on August 15, 2023 that certain *Order (I)(A) Approving Bidding Procedures for Sale of Substantially All of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (II) Granting Related Relief* [Dkt. No. 166] (the “**Bidding Procedures Order**”); the Debtors having determined that the highest or otherwise best offer for the Purchased Assets was made by the Buyer pursuant to the Purchase Agreement; the Court having conducted a hearing on [●] (the “**Sale Hearing**”), at which all parties in interest were offered an opportunity to be heard with respect to the Motion, to consider approval of the Sale pursuant to the terms and conditions of the Purchase Agreement; and the Court having considered (i) the Motion, all objections thereto, and all replies in support thereof, (ii) the arguments of counsel made, and evidence proffered or adduced, related to the Motion, (iii) all oral and written statements in support of the Sale at the hearing to consider approval of the Bidding Procedures Order and at the Sale Hearing by parties in interest; and (iv)

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<sup>3</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the Purchase Agreement, as applicable.

the full record in the Chapter 11 Cases, including the record related to the hearing to consider the approval of the Bidding Procedures Order (and the Bidding Procedures as defined in the Bidding Procedures Order) and the Sale Hearing; all parties in interest having been heard, or having had the opportunity to be heard, regarding the approval of the Purchase Agreement and the Sale and the related relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED:<sup>4</sup>**

**Jurisdiction, Final Order and Statutory Predicates**

A. The Court has jurisdiction to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. The Motion is a core proceeding under 28 U.S.C. § 157(b). The Court may enter a final order with respect to the Motion, the Sale, the transactions contemplated thereby, and all related relief, in each case, consistent with Article III of the United States Constitution. Venue is proper in the Court under 28 U.S.C. §§ 1408 and 1409.

B. The statutory bases for the relief requested in the Motion are sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014, and Local Rules 2002-1, 6004-1, and 9006-1.

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<sup>4</sup> All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith.

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

**Notice of Sale and the Cure Amounts**

D. Actual written notice of the Motion, the assumption and assignment of the Assumed Contracts, the Auction, the Sale Hearing, the Sale of the Purchased Assets, and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein, has been afforded to all known interested Persons,<sup>5</sup> including, but not limited to the following parties: (i) the Office of the United States Trustee for the District of Delaware, (ii) counsel to the Official Committee of Unsecured Creditors (the “**Committee**”), (iii) counsel to the Buyer, (iv) all Contract Counterparties (as defined below) and any other non-debtor parties to relevant contracts or leases (executory or otherwise), (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Purchased Assets, (vi) the Internal Revenue Service, (vii) all applicable state and local taxing authorities, (viii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002; (ix) all parties set forth in the Debtors’ Master Service List maintained in these Chapter 11 Cases (collectively, the “**Notice Parties**”).

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<sup>5</sup> “**Person**” means an individual, a person, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, a proprietorship, a firm, a labor union, estate, or a Governmental Authority or other entity, party or group.



E. In accordance with the provisions of the Bidding Procedures Order, the Debtors have served notice upon the counterparties to the Assumed Contracts (“**Contract Counterparty**” or “**Contract Counterparties**”): (i) that the Debtors seek to assume and assign to the Buyer the Assumed Contracts upon the Closing (as defined in the Purchase Agreement) of the Sale; and (ii) of the relevant Cure Amounts (as defined below). The service of such notice was good, proper, timely, adequate, sufficient, and appropriate under the circumstances, and no further notice need be given in respect of establishing a Cure Amount for the Assumed Contracts. Each of the Contract Counterparties has had an opportunity to object to the Cure Amounts set forth in the notice and to the assumption and assignment to the Buyer of the applicable Assumed Contract.

F. As evidenced by the certificates of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, due, good, proper, timely, adequate, sufficient, and appropriate notice of the Motion, the Sale, the Auction, the Sale Hearing, and the transactions contemplated thereby, including without limitation, the assumption and assignment of the Assumed Contracts to the Buyer, was provided in accordance with the orders previously entered by the Court, sections 102(1), 105(a), 363, and 365 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008 and 9014. The notices described herein were good, proper, timely, adequate, sufficient, and appropriate under the circumstances, and reasonably calculated to provide the Notice Parties and all other interested parties with timely and proper notice under the circumstances of these Chapter 11 Cases and no other or further notice of the Motion, the Sale, the Auction, the Sale Hearing, the Closing, the assumption and assignment of the Assumed Contracts to the Buyer or with respect to the matters described herein is, or shall be, required. A reasonable opportunity to object and be heard with respect to the Sale, the Motion, and the relief requested therein, including but not limited to the assumption and assignment of the

Assumed Contracts and the Cure Amounts, has been afforded to all interested parties, including the Notice Parties.

G. The disclosures made by the Debtors and the Buyer concerning the Sale, the Auction, the Purchase Agreement, the Motion, the Sale Hearing, and the assumption and assignment of the Assumed Contracts to the Buyer were good, proper, timely, adequate, sufficient, and appropriate.

H. A reasonable opportunity to object and be heard with respect to the Sale, the Motion, and the relief requested therein, including but not limited to the assumption and assignment of the Assumed Contracts and the Cure Amounts, has been afforded to all interested parties, including the Notice Parties.

**Good Faith of the Buyer**

I. The Debtors and Buyer have proffered or otherwise adduced evidence that (i) they proposed, negotiated, and entered into the Purchase Agreement without collusion, in good faith, and from arm's length bargaining positions immediately prior to the Closing, (ii) immediately prior to the Closing, neither the Buyer nor any of the Buyer Parties (as defined below) was an "insider" or "affiliate" of any Debtor (each as defined under sections 101(2) and 101(31) of the Bankruptcy Code), (iii) the Buyer and the Buyer Parties proceeded in good faith in connection with all aspects of the Sale, including, but not limited to: (a) recognizing that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets pursuant to and in accordance with the Bidding Procedures Order; (b) neither inducing nor causing the filing of the Chapter 11 Cases; (c) disclosing all payments to be made, and all other material agreements or arrangements entered into, by the Buyer in connection with the Sale; and (d) having no common identity of directors or controlling stockholders between the Buyer, on the one hand, and the Debtors, on the other hand,

and (iv) no admissible evidence having been proffered or adduced that contradicts clauses (i) through (iii) of this paragraph. The Buyer is therefore purchasing the Purchased Assets in good faith and is a good faith Buyer within the meaning of section 363(m) of the Bankruptcy Code. As such, the Buyer is entitled to all of the rights, benefits, privileges and protections afforded under section 363(m) of the Bankruptcy Code, and under any other applicable or similar bankruptcy and nonbankruptcy law.

J. Further, neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Sale to be avoided, or costs or damages to be imposed under section 363(n) of the Bankruptcy Code, and accordingly neither the Debtors nor the Buyer has violated section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, the Buyer has not acted in a collusive manner with any Person and the Purchase Price paid by the Buyer for the Purchased Assets was not controlled by any agreement among the bidders, all of whom acted in good-faith, at arm's length, and in a noncollusive manner. The transactions under the Purchase Agreement may not be avoided, and no damages may be assessed against the Buyer or any Buyer Party (defined below) under section 363(n) of the Bankruptcy Code or any other applicable bankruptcy or non-bankruptcy law.

K. [Reserved].

#### **Highest and Best Offer**

L. The Bidding Procedures are reasonable and appropriate and represent the best available method for conducting the Sale process in a manner that maximizes value for the benefit of the Debtors' estates. The Debtors conducted a marketing and sale process with respect to the Purchased Assets in accordance with, and have otherwise complied in all respects with, the Bidding Procedures and the Bidding Procedures Order. The marketing and Sale process set forth

in the Bidding Procedures Order afforded a full, fair, and reasonable opportunity for any Person to make a higher or otherwise better offer to purchase the Purchased Assets. The Auction was duly noticed and conducted in a non-collusive, fair, and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Purchased Assets.

M. The Purchase Agreement constitutes the highest and best offer for the Purchased Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative in these Chapter 11 Cases and would be better than if such cases were converted to cases under Chapter 7 of the Bankruptcy Code. The Debtors' determination that the Purchase Agreement maximizes value for the benefit of the Debtors' estates and constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment and is in accordance and compliance with the Bidding Procedures and the Bidding Procedures Order.

N. The Purchase Agreement represents fair and reasonable terms for the purchase of the Purchased Assets. No other Person or group of Persons has offered to purchase the Purchased Assets for greater overall value to the Debtors' estates than the Buyer.

O. Approval of the Motion and the Purchase Agreement and the consummation of the transactions contemplated thereby will maximize the value of each Debtors' estates, are in the best interests of the Debtors, these Chapter 11 Cases, their creditors, and other parties-in-interest.

**No Merger; The Buyer Not an Insider; No Successor Liability**

P. Neither the Buyer or nor any of the Buyer Parties is a successor to or a mere continuation or substantial continuation of the Debtors or the Debtors' estates, and there is no continuity of enterprise or common identity between the Buyer (or any of the Buyer Parties) and

the Debtors. None of the Buyer or the Buyer Parties is holding itself out to the public as a successor to or a continuation of the Debtors or the Debtors' estates. Each of the Buyer and Buyer Parties is not, and shall not be, considered a successor in interest to any of the Debtors or the Debtors' estates by reason of any theory of law or equity, and the Sale does not amount to a consolidation, succession, mere continuation of, combination of, merger, or *de facto* merger of the Buyer and the Debtors.

Q. As set forth above, immediately prior to the Closing, neither the Buyer nor any of the Buyer Parties was an "insider" or "affiliate" (as those terms are defined in the Bankruptcy Code) of the Debtors, and no common identity of incorporators, directors, or controlling stockholders existed between the Debtors on the one hand and the Buyer or the Buyer Parties on the other hand. The transfer of the Purchased Assets to the Buyer, and the assumption of the Assumed Liabilities, except as otherwise explicitly set forth in the Purchase Agreement, does not, and will not, subject the Buyer or the Buyer Parties to any liability whatsoever, with respect to the Debtors or the operation of the Debtors' businesses prior to the Closing (as modified by the Purchase Agreement) or by reason of such transfer, including under the laws of any foreign, federal, state, or local revenue, pension, tax, antitrust, environmental, labor or employment or benefits law, including without limitation, any WARN Act, the Consolidated Omnibus Budget Reconciliation Act (COBRA), or Employee Retirement Income Security Act (ERISA), under the basis of *de facto* merger, business continuation, substantial continuity, successor, vicarious, alter ego, derivative, or transferee liability, fraudulent transfer or avoidance, veil piercing, escheat, continuity of enterprise, mere continuation, product line, or other law, rule, regulation (including filing requirements under any such laws, rules, or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule, or regulation or doctrine,

whether now known or unknown, now existing or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether matured or unmatured, whether contingent or noncontingent, whether liquidated or unliquidated, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity, or otherwise, including, but not limited to, liabilities on account of warranties, intercompany loans, and receivables among the Debtors, and any taxes, arising, accruing, or payable under, out of, in connection with, or in any way relating to the cancellation of debt of the Debtors or their respective affiliates, or in any way relating to the operation of any of the Purchased Assets prior to the Closing (Paragraphs P and Q collectively, the “**Successor or Other Liabilities**”). Pursuant to the Purchase Agreement, the Buyer is not purchasing all of the Debtors’ assets in that the Buyer is not purchasing any of the Excluded Assets or assuming the Excluded Liabilities and shall have no liability for the Excluded Liabilities.

**Validity of Transfer**

R. The transfer of the Purchased Assets to the Buyer will be a legal, valid, enforceable, and effective sale and transfer of the Purchased Assets and will vest the Buyer with all legal, equitable, and beneficial right, title, and interest of the Debtors to the Purchased Assets free and clear of all Claims and Interests (as defined below) (other than Assumed Liabilities) of any kind or nature whatsoever, including without limitation, rights or claims that are Successor or Other Liabilities, or that are based on any Successor or Other Liabilities.

S. The Purchase Agreement is a valid and binding contract between the Debtors and the Buyer and shall be enforceable pursuant to its terms. The Purchase Agreement, the Sale, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and any chapter 7 trustee or chapter 11 trustee appointed in these

Chapter 11 Cases and shall not be subject to rejection or avoidance by the foregoing parties or any other Person. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia, or foreign jurisdiction. The consideration provided by the Buyer for the Purchased Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia, and any foreign jurisdiction (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, and similar laws and acts). Neither the Debtors nor the Buyer is entering into the transactions contemplated by the Purchase Agreement fraudulently for the purpose of statutory and common-law fraudulent conveyance and fraudulent transfer claims.

T. The Debtors have, to the extent necessary and applicable, (i) full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby, (ii) all corporate authority necessary to consummate the transactions contemplated by the Purchase Agreement, and (iii) taken all corporate action necessary to authorize and approve the Purchase Agreement and the consummation of the transactions contemplated thereby. The Sale has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtors to consummate the Sale, execute the Purchase Agreement, or consummate the transactions contemplated thereby.

**Free and Clear of All Claims and Interests**

U. The Debtors are the sole and lawful owners of the Purchased Assets, and no other Person has any ownership right, title, or interests therein. The Purchased Assets constitute property of the Debtors' estates and good title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The Debtors have (except to the extent otherwise provided in the Purchase Agreement) all right, title, and interest in the Purchased Assets. The transfer of the Purchased Assets to the Buyer will be, as of the Closing, a legal, valid, and effective transfer of the Purchased Assets, which transfer vests or will vest the Buyer with all right, title, and interest of the Debtors to the Purchased Assets free and clear of any and all (i) liens (including any liens as that term is defined in section 101(37) of the Bankruptcy Code) and encumbrances relating to, accruing, or arising any time prior to the Closing (collectively, the "**Liens**"), and (ii) all debts (as that term is defined in section 101(12) of the Bankruptcy Code) arising under, relating to, or in connection with any act of the Debtors or claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options in favor of third parties, rights, contractual commitments, restrictions, interests, mortgages, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, deeds of trust, security interests or similar interests, conditional sale or other title retention agreements and other similar impositions, imperfections or restrictions on transfer or use, pledges, judgments, claims for reimbursement, contribution, indemnity, exoneration, infringement, products liability, alter ego liability, suits, defenses, credits, allowances, options, limitations, action, causes of action, choses in action, rights of first refusal or first offer, rebate, chargeback, credit, or return, proxy, voting trust or agreement or transfer restriction under any shareholder or similar agreement or encumbrance, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of the Chapter 11 Cases, whether known or unknown, legal or



equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, rights with respect to Claims (as defined below) and Liens (x) that purport to give to any party a right or option to effect a setoff against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase, or repurchase right or option, or termination of, any of the Debtors' or the Buyer's interests in the Purchased Assets, or any similar rights, if any, or (y) in respect of taxes, restrictions, rights of first refusal, charges or interests of any kind or nature, if any, including, without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of any attributes of ownership) (the items in this clause (ii), collectively, the "**Claims**", and together with the Liens and other interests of any kind or nature whatsoever, the "**Claims and Interests**"), relating to, accruing, or arising any time prior to entry of this Order), with the exception of any such Claims and Interests that are expressly assumed by the Buyer as Assumed Liabilities solely to the extent set forth in the Purchase Agreement, including, for the avoidance of any doubt, Cure Amounts or any other obligations arising under the Assumed Contracts solely to the extent identified and/or set forth in the Purchase Agreement.

V. The appointment of a consumer privacy ombudsman pursuant to section 363(b)(1) or section 332 of the Bankruptcy Code is not required with respect to the relief requested in the Motion.

**Section 363(f) Is Satisfied**

W. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtors may sell the Purchased Assets free and clear of any Claims and Interests in the Purchased Assets (other than the Assumed Liabilities).

X. The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the Sale of the Purchased Assets to the Buyer, and the assumption and assignment of the Assumed Contracts to the Buyer, were not free and clear of all Claims and Interests of any kind or nature whatsoever (except the Assumed Liabilities), or if the Buyer would, or in the future could, be liable for any of such Claims and Interests (except the Assumed Liabilities). The Buyer will not consummate the transactions contemplated by the Purchase Agreement unless the Court expressly orders that none of the Buyer, its affiliates, its past, present and future members, shareholders, subsidiaries, parents, divisions, agents, representatives, insurers, attorneys, successors and assigns, or any of its or their respective directors, managers, officers, employees, agents, representatives, attorneys, contractors, subcontractors, independent contractors, owners, insurance companies, or partners (each a “**Buyer Party**”, and collectively, the “**Buyer Parties**”), or the Purchased Assets, will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, or by payment, setoff, recoupment, or otherwise, directly or indirectly, any Claims and Interests (other than Assumed Liabilities), including rights or claims based on any Successor or Other Liabilities. The total consideration to be provided under the Purchase Agreement reflects the Buyer’s reliance on this Order to provide it, pursuant to sections 105(a) and 363 of the Bankruptcy Code, with title to and possession of the Purchased Assets free and clear of all Claims and Interests (other than Assumed Liabilities) of any kind or nature whatsoever (including, without limitation, free and clear of any potential Successor or Other Liabilities).

Y. Not transferring the Purchased Assets free and clear of all Claims and Interests (other than Assumed Liabilities) of any kind or nature whatsoever, including rights or claims based on any Successor or Other Liabilities and/or applicable state, federal, or foreign law or otherwise,

would adversely impact the Debtors' efforts to maximize the value of their estates, and the transfer of the Purchased Assets other than pursuant to a transfer that is free and clear of all Claims and Interests (other than Assumed Liabilities) of any kind or nature whatsoever (including any potential Successor or Other Liabilities) would be of substantially less benefit to the Debtors' estates.

Z. The Debtors may sell the Purchased Assets free and clear of all Claims and Interests against the Debtors, their estates, or any of the Purchased Assets (except the Assumed Liabilities) because, in each case, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Claims and Interests against the Debtors, their estates, or any of the Purchased Assets, who did not timely object, or who withdrew their objections to, the Sale or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. All other holders of Claims and Interests (except to the extent that such Claims and Interests are Assumed Liabilities) fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code. All holders of Claims and Interests are adequately protected by having their Claims and Interests, if any, in each instance against the Debtors, their estates, or any of the Purchased Assets attach to the net cash proceeds of the Sale ultimately attributable to the Purchased Assets in which such holder alleges a Claim and Interest, in the same order of priority, with the same validity, force, and effect that such Claim and Interest had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess thereto.

**Assumption and Assignment of the Assumed Contracts**

AA. The assumption and assignment of the Assumed Contracts pursuant to the terms of this Order, the Bidding Procedures Order, and the Purchase Agreement, is integral to the Purchase

Agreement and is in the best interests of the Debtors, their estates, their creditors, and all other parties-in-interest, and represents the Debtors' reasonable exercise of sound and prudent business judgment. The assumption and assignment of the Assumed Contracts (i) is necessary to sell the Purchased Assets to the Buyer, (ii) allows the Debtors to maximize the value of the Purchased Assets, including the Assumed Contracts, (iii) limits the losses suffered by counterparties to the Assumed Contracts, and (iv) maximizes the recoveries to other creditors of the Debtors by limiting the amount of claims against the Debtors' estates by avoiding the rejection of the Assumed Contracts. For these reasons, the Debtors have exercised sound business judgment in assuming and assigning the Assumed Contracts and such assumption and assignment is in the best interests of the Debtors' estates.

BB. Pursuant to section 365(f) of the Bankruptcy Code, each of the Assumed Contracts required to be assumed and assigned under the Purchase Agreement shall be assigned and transferred to and remain in full force and effect for the benefit of, the Buyer, notwithstanding any provision in such contract or other restrictions prohibiting its assignment or transfer. No section of any of the Assumed Contracts that would prohibit, restrict, or condition, whether directly or indirectly, the use, assumption, or assignment of any of the Assumed Contracts in connection with the Sale shall have any force or effect.

CC. Except as expressly assumed by the Buyer under the Purchase Agreement, the transfer of the Purchased Assets to the Buyer and the assignment to the Buyer of the Assumed Contracts will not subject the Buyer or any Buyer Party to any liability whatsoever which may become due or owing under the Assumed Contracts prior to the Closing (other than Cure Amounts with respect to the Buyer), or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or foreign jurisdiction, based, in

whole or in part, directly or indirectly, on any theory of law or equity, including any Successor or Other Liabilities.

DD. The respective amounts set forth on Exhibit[●] annexed hereto are the sole amounts necessary under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all monetary defaults and pay all pecuniary losses under the Assumed Contracts, subject in all respects to the terms and conditions of the Purchase Agreement including Section 2.6 therein (the “**Cure Amounts**”).

EE. The Buyer has demonstrated adequate assurance of future performance with respect to the Assumed Contracts pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to the respective Assumed Contracts.

**Compelling Circumstances for an Immediate Sale**

FF. The Debtors have demonstrated through the testimony and/or other evidence proffered or adduced in connection with the Motion, at the hearing to consider approval of the Bidding Procedures Order (and the Bidding Procedures) and at the Sale Hearing, and the arguments, statements and representations of counsel made on the record of the Sale Hearing good and sufficient reasons for approval of the Purchase Agreement, the Sale and the transactions contemplated thereby. The relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties-in-interest. The Debtors have demonstrated (i) good, sufficient, and sound business purposes and justifications for approving the Purchase Agreement and (ii) compelling circumstances for the immediate approval and consummation of the transactions contemplated by the Purchase Agreement for the Sale, in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to maximize

the value of the Debtors' estates, and the Sale will provide the means for the Debtors to maximize distributions to their creditors. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004 and 6006 with respect to the transactions contemplated by this Order.

GG. To maximize the value of the Purchased Assets and preserve the viability of the businesses to which they relate, it is essential that the Sale occur within the time constraints set forth in the Purchase Agreement. Time is of the essence in consummating the Sale.

HH. Given all of the circumstances of the Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Purchase Agreement, the proposed Sale constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

II. The Sale does not constitute a *sub rosa* Chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Sale neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates a liquidating Chapter 11 plan for the Debtors.

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

### **Repayment of DIP**

KK. Pursuant to the *Final Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Lender, and (III) Granting Related Relief* [Dkt. No. 220] ("**Final DIP Order**"), until the DIP Obligations (as defined in the Final DIP Order) have been satisfied in full in accordance with

the DIP Documents (as defined in the Final DIP Order), all proceeds from the sale or other disposition of, or other revenue of any kind attributable to, any DIP Collateral or Collateral (as each term is defined in the Final DIP Order) that shall come into the possession or control of any Debtor shall be subject to the DIP Liens (as defined in the Final DIP Order).

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

**General Provisions**

1. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to these Chapter 11 Cases pursuant to Bankruptcy Rule 9014. To the extent that any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

2. The Motion and the relief requested in the Motion is granted and approved, and the Sale and the transactions contemplated in the Motion and by the Purchase Agreement are approved.

3. The Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order remain in full force and effect.

4. All objections to, reservations of rights regarding, or other responses to the Motion or the relief requested therein, the Purchase Agreement, the Sale, the entry of this Order, or the relief granted herein, including, without limitation, any objections to Cure Amounts or relating to the cure of any defaults under any of the Assumed Contracts or to the assumption and assignment of any such Assumed Contracts to the Buyer by the Debtors, that have not been withdrawn, waived, or settled by announcement to the Court during the Sale Hearing or by stipulation filed with the Court or otherwise been resolved pursuant to the terms thereof, including any and all reservations

of rights included in such objections or otherwise, are hereby denied and overruled on the merits with prejudice. Those parties who did not object or withdrew their objections to the Motion or the entry of this Order in accordance with the Bidding Procedures Order, or who withdrew their objections thereto, are deemed to have consented to the relief granted herein for all purposes, including without limitation, pursuant to section 363(f)(2) of the Bankruptcy Code.

**Approval of the Purchase Agreement**

5. The Debtors are authorized to enter into the Purchase Agreement. Pursuant to sections 105(a), 363(b) and (f), and 365 of the Bankruptcy Code, the Debtors are authorized and empowered on behalf of themselves to take any and all actions necessary or appropriate to (i) consummate the Sale pursuant to and in accordance with the terms and conditions of the Purchase Agreement, (ii) close the Sale as contemplated in the Purchase Agreement and this Order, and (iii) execute and deliver, perform under, consummate, implement, and take any and all other acts or actions as may be reasonably necessary or appropriate to the performance of their obligations as contemplated by the Purchase Agreement, without further notice to or order from the Court, including the assumption and assignment of the Assumed Contracts to the Buyer, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale.

6. This Order shall be binding in all respects upon (a) the Debtors, (b) the Debtors' estates, (c) all creditors of, and holders of equity interests in, the Debtors, (d) all holders of Liens, encumbrances, or other Claims and Interests (whether known or unknown) in, against, or on all or any portion of the Purchased Assets, (e) all the Contract Counterparties, (f) the Buyer and all successors and assigns of the Buyer, (g) the Purchased Assets, and (h) all successors and assigns of each of the foregoing, including, without limitation, any trustee subsequently appointed in the



Chapter 11 Cases, or a chapter 7 trustee appointed upon a conversion of one or more of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code. This Order shall inure to the benefit of the Debtors, their estates and creditors, the Buyer, and the respective successors and assigns of each of the foregoing, including, without limitation, any trustee subsequently appointed in the Chapter 11 Cases or upon conversion to chapter 7 under the Bankruptcy Code, and any Person seeking to assert rights on behalf of any of the foregoing or that belong to the Debtors' estates. The Purchase Agreement shall be binding in all respects upon the Debtors.

**Transfer of the Purchased Assets**

7. Pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Purchased Assets, including the Assumed Contracts, to the Buyer on the Closing in accordance with the terms of the Purchase Agreement, and such transfer shall (a) constitute a legal, valid, binding, and effective transfer of the Purchased Assets, (b) vest the Buyer with title to and possession of the Purchased Assets, and (c) upon the Debtors' receipt of the Purchase Price, be free and clear of all Claims and Interests (other than Assumed Liabilities) of any kind or nature whatsoever, including, without limitation, any potential Successor or Other Liabilities, with such Claims and Interests to attach to the net cash proceeds of the Sale ultimately attributable to the Purchased Assets in which such Claim and Interest is alleged in the order of their priority, with the same validity, force, and effect which they now have as against the Purchased Assets (subject to any rights, claims and defenses the Debtors or their estates may possess with respect thereto). Upon the Closing, the Buyer shall take title to and possession of the Purchased Assets subject only to the Assumed Liabilities.

8. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the sale and transfer of the Debtors' right, title and interest in the Purchased Assets to the Buyer pursuant to the

Purchase Agreement are legal, valid and effective disposition of the Purchased Assets, and vests the Buyer with all right, title and interest of the Debtors to and in the Purchased Assets free and clear of all Claims and Interests. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full and the Debtors sale of the Purchased Assets shall be free and clear of any Claims and Interests in the Purchased Assets (other than the Assumed Liabilities).

9. To the extent provided for in the Purchase Agreement, any and all of the Debtors' security deposits, or other security held by landlords, lessors and other counterparties to the contracts, leases, and licenses that are to be assumed and assigned under the Purchase Agreement are being transferred and assigned to, and shall be the property of, the Buyer from and after the Closing (as modified by the Purchase Agreement), which transfer and assignment of security deposits, other deposits, or security shall satisfy in full the requirements of section 365(l) of the Bankruptcy Code for all contracts, leases, and licenses assumed and assigned pursuant to this Order or the Purchase Agreement.

10. The Debtors are hereby authorized on behalf of themselves to take any and all actions necessary to consummate the transactions contemplated by the Purchase Agreement, including any actions that otherwise would require further approval by shareholders, partners, members, or their respective boards of directors or boards of managers, as the case may be, without the need of obtaining such approvals.

11. Each and every federal, state, local, and other governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

12. The transactions authorized herein shall be of full force and effect, regardless of the

Debtors' lack of good standing in any jurisdiction in which they are formed or authorized to transact business. Upon Closing of the transactions set forth in the Purchase Agreement, the Buyer shall be authorized to file termination statements or lien terminations in any required jurisdiction to remove any record, notice filing, or financing statement recorded to attach, perfect, or otherwise notice any Claims and Interests, with respect to the Purchased Assets, that is extinguished or otherwise released pursuant to this Order under section 363 and the related provisions of the Bankruptcy Code.

13. Subject to the terms, conditions, and provisions of this Order, all Persons are hereby forever prohibited and barred from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Purchased Assets to the Buyer in accordance with the terms of the Purchase Agreement and this Order.

14. The Buyer may, but shall not be required to, file a certified copy of this Order in any filing or recording office in any federal, state, county, or other territory or jurisdiction in which any of the Debtors is incorporated or has real or personal property, or with any other appropriate clerk or recorded with any other appropriate recorder.

15. The provisions of this Order authorizing the Sale of the Purchased Assets free and clear of all Claims and Interests, other than Assumed Liabilities, shall be self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order. If any Person which has filed a financing statement, mortgage, mechanic's lien, *lis pendens*, or other statement, document, or agreement evidencing any Claims and Interests on, or in, all or any portion of the Purchased Assets (other than statements or documents with respect to Assumed Liabilities) shall not have delivered to the Debtors prior to

the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases, and/or any other documents necessary for the purpose of documenting the termination of all Claims and Interests which the Person has or may assert with respect to all or any portion of the Purchased Assets, then (i) the Debtors are hereby authorized to execute and file such statements, instruments, releases, and/or other similar documents on behalf of such Person with respect to the Purchased Assets, (ii) the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order that, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the termination of all Claims and Interests of any kind or nature against or in the Purchased Assets, and (iii) the Buyer is authorized to seek in the Court, or any other court of appropriate jurisdiction, to compel the appropriate parties to execute termination statements, instruments of satisfaction, releases, and/or other similar documents with respect to all Claims and Interests that such Person has against or in the Purchased Assets.

16. On the Closing, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Debtors' interests in the Purchased Assets. And with respect to the Purchased Assets, this Order is and shall be effective as a determination that, on the Closing, all Claims and Interests and any other interest of any kind or nature whatsoever including, without limitation, any Successor or Other Liabilities existing as to such Purchased Assets prior to the Closing, other than the Assumed Liabilities, shall have been terminated, and that the conveyances described herein have been effected; provided, however, that such Claims and Interests shall attach to the proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they now have as against the Purchased Assets.

17. To the greatest extent available under applicable law, the Buyer shall be authorized, as of the Closing, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Purchased Assets and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, deemed to be transferred to the Buyer as of the Closing.

18. To the extent section 525 of the Bankruptcy Code is applicable, no governmental unit may deny, revoke or suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets on account of the filing or pendency of the Chapter 11 Cases or the consummation of the transactions contemplated by the Purchase Agreement, including the Sale and the assumption and assignment of the Assumed Contracts.

**No Successor Liability**

19. Neither the Buyer nor any of the Buyer Parties is a “successor” to, continuation of, or alter ego of, any of the Debtors or the Debtors’ estates by reason of any theory of law or equity. Except for the Assumed Liabilities, the Buyer and the Buyer Parties shall not have assumed, or be deemed to have assumed, or in any way be responsible for, any liability or obligation of any of the Debtors, or the Debtors’ estates, or any of the Debtors’ predecessors or affiliates with respect to the Purchased Assets or otherwise. Neither the purchase of the Purchased Assets by the Buyer nor the fact that the Buyer is using any of the Purchased Assets previously used or operated by the Debtors will cause the Buyer or any of the Buyer Parties to be deemed a successor to, combination of, or alter ego of, in any respect, any of the Debtors or the Debtors’ businesses, or incur any liability derived therefrom within the meaning of any foreign, federal, state, or local revenue, pension, ERISA, tax, antitrust, environmental, labor law (including any WARN Act), employment or benefits law, *de facto* merger, business continuation, substantial

continuity, successor, vicarious, alter ego, derivative, or transferee liability, fraudulent transfer or avoidance, veil piercing, escheat, continuity of enterprise, mere continuation, product line, or other law, rule, regulation (including filing requirements under any such laws, rules, or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule, or regulation or doctrine, whether now known or unknown, now existing or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether matured or unmatured, whether contingent or noncontingent, whether liquidated or unliquidated, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity, or otherwise, including, but not limited to, liabilities on account of warranties, intercompany loans, and receivables among the Debtors, and any taxes, arising, accruing, or payable under, out of, in connection with, or in any way relating to the cancellation of debt of the Debtors or their respective affiliates, or in any way relating to the operation of any of the Purchased Assets prior to the Closing.

**Claims and Interests; Prohibition of Actions Against the Buyer**

20. Except for the Assumed Liabilities, or as otherwise expressly provided for in this Order or the Purchase Agreement, neither the Buyer nor any of the Buyer Parties shall have any liability, responsibility or obligation for any Claims and Interests of the Debtors or their estates, including any claims, liabilities, or other obligations arising under or related to any of the Purchased Assets which may become due or owing (a) prior to the Closing or (b) from and after the Closing but which arise out of relate to any act, omission, circumstances, breach, default, or other event occurring prior to the Closing.

21. Except with respect to Assumed Liabilities, or as otherwise permitted by the Purchase Agreement or this Order, all Persons, including, but not limited to, all debt holders, equity

security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants, Contract Counterparties, customers, landlords, licensors, employees, and other creditors and holders of Claims and Interests of any kind or nature whatsoever against or in any of the Debtors or any portion of the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, known or unknown, liquidated or unliquidated, senior or subordinate, asserted or unasserted, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Debtors' business prior to the Closing, or the transfer of the Purchased Assets to the Buyer (including without limitation any Successor or Other Liabilities or rights or claims based thereon) shall be, and hereby are forever barred and estopped from asserting against the Buyer or any Buyer Party, or their respective assets or properties, including, without limitation, the Purchased Assets, the Claims and Interests of any kind or nature whatsoever such Person had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders, or the Purchased Assets, such Persons' Claims and Interests or any other interests in and to the Purchased Assets, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding, the employment of process, or any act (whether in law or equity, in any judicial, administrative, arbitral, or other proceeding) against the Buyer or any Buyer Party, or their respective assets or properties, including, without limitation, the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Buyer or any Buyer Party, or their respective assets or properties, including, without limitation, the Purchased Assets; (c) creating, perfecting, or enforcing any Claims and Interests against the Buyer or any Buyer Party, or their respective assets or properties, including, without

limitation, the Purchased Assets; (d) asserting any setoff, or right of subrogation of any kind against any obligation due to the Buyer or any Buyer Party, or their respective assets or properties, including, without limitation, the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply with or is inconsistent with the provisions of this Order, other orders of the Court, the Purchase Agreement or any other agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to transfer any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets in connection with the Sale.

22. On the Closing, or as soon as possible thereafter, each creditor shall, and the Buyer is hereby authorized, on behalf of each of the Debtors' creditors, to execute such documents and take all other actions as may be necessary to release any Claims and Interests and other interests in or on the Purchased Assets (except Assumed Liabilities), if any, as provided for herein, as such Claims and Interests may have been recorded or may otherwise exist.

23. All Persons are hereby barred and forever prohibited from taking any action that would adversely affect or interfere with the ability of any of the Debtors to sell and transfer the Purchased Assets to the Buyer in accordance with the terms of the Purchase Agreement and this Order.

24. The consideration provided by the Buyer for the Purchased Assets under the Purchase Agreement is fair and reasonable, and accordingly, the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

25. Following the Closing, no holder of a Claim or an Interest in the Debtors shall interfere with the Buyer's title to or use and enjoyment of the Purchased Assets and the Assumed



Contracts based on or related to such Claim or Interest or any actions that the Debtors may take in these Chapter 11 Cases.

**Assumption and Assignment of Contracts**

26. Pursuant to sections 105(a) and 365 of the Bankruptcy Code and the Bidding Procedures Order, and subject to and conditioned upon the terms of the Purchase Agreement (including, without limitation, Sections 2.3 and 2.6 of the Purchase Agreement, the Closing, and payment of the applicable Cure Amounts by the Buyer (pursuant to the terms of the Purchase Agreement, including Section 2.6 thereof), the Debtors' assumption and assignment to the Buyer, and the Buyer's assumption on the terms set forth in the Purchase Agreement, of the Assumed Contracts is hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied. Upon the Closing and payment of the applicable Cure Amounts by the Buyer pursuant to the terms of the Purchase Agreement (including Section 2.6 thereto) and in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested with all right, title, and interest of the Debtors in and under the Assumed Contracts free and clear of any Claims or Interests, and each such Assumed Contract shall be fully enforceable by the Buyer in accordance with its respective terms and conditions, except as limited by this Order. To the extent provided in the Purchase Agreement, the Debtors shall cooperate with, and take all actions reasonably requested by, the Buyer to effectuate the foregoing.

27. With respect to the assumption and assignment of the Assumed Contracts to Buyer as provided in Paragraph 26 of this Order: (a) any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify

any term or condition upon the assignment of such Assumed Contract, shall constitute unenforceable anti-assignment provisions which are void and of no force and effect; (b) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Buyer of each Assumed Contract have been satisfied; and (c) effective upon the Closing, the Assumed Contracts shall be transferred and assigned to, and from and following the Closing (as modified by the Purchase Agreement) shall remain in full force and effect for the benefit of, the Buyer, notwithstanding any provision in any Assumed Contract (including those of the type described in sections 365(b)(2) and (d) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer, and pursuant to section 365(k) of the Bankruptcy Code, the Buyer shall be deemed to be substituted for the applicable Debtor as a party to the applicable Assumed Contract and the Debtors shall be relieved from any further liability with respect to the Assumed Contracts after such assumption and assignment to the Buyer, except as otherwise provided in the Purchase Agreement. Further, to the extent any provision in any of the Assumed Contracts assumed and assigned pursuant to Paragraph 26 of this Order (i) prohibits, restricts, or conditions, or purports to prohibit, restrict, or condition, such assumption and assignment (including, without limitation, any “change of control” provision), or (ii) is modified, breached, or terminated, or deemed modified, breached, or terminated by any of the following: (A) the commencement of the Chapter 11 Cases, (B) the insolvency or financial condition of any of the Debtors at any time before the closing of the Chapter 11 Cases, (C) the Debtors’ assumption and assignment of such Assumed Contract, (D) a change of control or similar occurrence, or (E) the consummation of the Sale, then such provision shall be deemed modified in connection with the Sale so as not to entitle the Contract Counterparty thereto to prohibit, restrict, or condition such assumption and assignment, to modify, terminate, or declare

a breach or default under such Assumed Contract, or to exercise any other default-related rights or remedies with respect thereto, including without limitation, any such provision that purports to allow the Contract Counterparty thereto to terminate or recapture such Assumed Contract, impose any penalty, additional payments, damages, or other financial accommodations in favor of the Contract Counterparty thereunder, condition any renewal or extension thereof, impose any rent acceleration or assignment fee, or increase or otherwise impose any other fees or other charges in connection therewith. All such provisions constitute unenforceable anti-assignment provisions that are void and of no force and effect in connection with the Sale pursuant to sections 365(b), 365(e), and 365(f) of the Bankruptcy Code.

28. All defaults or other obligations of the Debtors under the Assumed Contracts arising or accruing prior to the Closing or required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assumed Contracts (in each case, without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code), whether monetary or non-monetary, shall be cured solely to the extent set forth in the Purchase Agreement (including Section 2.6 thereto) and this Order on the Closing or as soon thereafter as reasonably practicable.

29. All requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Buyer of the Assumed Contracts have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested with all right, title, and interest of the Debtors in and under the Assumed Contracts, and each Assumed Contract shall be fully enforceable by the Buyer in accordance with its respective terms and conditions, except as limited by this Order. To

the extent provided in the Purchase Agreement, the Debtors shall cooperate with, and take all actions reasonably requested by, the Buyer to effectuate the foregoing.

30. Upon the Debtors' assignment of the Assumed Contracts to the Buyer under the provisions of this Order and the Buyer's payment of the Cure Amounts pursuant to the terms of the Purchase Agreement (including Section 2.6 thereto) no default or other obligations arising prior to the Closing shall exist under any Assumed Contract, and each Contract Counterparty to an Assumed Contract is forever barred and estopped from (a) declaring a default by the Debtors or the Buyer under such Assumed Contract, (b) raising or asserting against the Debtors or the Buyer (or any Buyer Party), or the property of either of them, any assignment fee, default, breach, or claim of pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts, or (c) taking any other action against the Buyer or any Buyer Party as a result of any Debtor's financial condition, bankruptcy, or failure to perform any of its obligations under the relevant Assumed Contract, in each case in connection with the Sale. Each Contract Counterparty is also forever barred and estopped from raising or asserting against the Buyer or any Buyer Party any assignment fee, default, breach, Claim, pecuniary loss, or condition to assignment arising under or related to the Assumed Contracts existing as of the Closing or arising by reason of the closing of the Sale, except for any amounts that are Assumed Liabilities.

31. Any party that may have had the right to consent to the assumption or assignment of an Assumed Contract, including (if applicable) the Contract Counterparty to each Assumed Contract, is deemed to have consented to such assumption and assignment for purposes of sections 365(c)(1)(B) and 365(e)(2)(A)(ii) of the Bankruptcy Code and any other applicable law if such party failed to object timely to the assumption or assignment of such Assumed Contract (in accordance with, among other things, the Bidding Procedures Order (if any)), and the Buyer shall

enjoy all of the Debtors' rights and benefits under each such Assumed Contract as of the applicable date of assumption without the necessity of obtaining such Contract Counterparty's written consent to the assumption or assignment thereof. The Buyer shall be deemed to have demonstrated adequate assurance of future performance with respect to such Assumed Contract pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

32. To the extent a Contract Counterparty to an Assumed Contract failed to timely object to a Cure Amount, such Cure Amount shall be deemed to be finally determined and any such Contract Counterparty shall be prohibited from challenging, objecting to, or denying the validity and finality of the Cure Amount at any time, and such Cure Amount, when paid, shall be deemed to resolve any defaults or other breaches with respect to any Assumed Contract to which it relates.

33. [With respect to objections to any Cure Amounts that remain unresolved as of the Hearing, such objections shall be resolved in accordance with the procedures to be developed the applicable Contract Counterparty, the Debtors, and the Buyer.]

34. Nothing in this Order, the Motion, or in any notice or any other document is or shall be deemed an admission by the Debtors that any contract or Assumed Contract is an executory contract or unexpired lease or must be assumed and assigned pursuant to the Purchase Agreement or in order to consummate the Sale.

#### **Buyer Standing and Assumed Liabilities**

35. The Buyer shall have standing to object to the allowance of claims (as such term is defined in section 101(5) of the Bankruptcy Code) asserted against the Debtors or their estates including, without limitation, any unresolved or disputed Assumed Liabilities, Cure Amounts or otherwise, that constitute obligations assumed by the Buyer pursuant to the terms of the Purchase

Agreement. Nothing in this Order shall divest the Debtors of their standing or duty as debtors-in-possession under the Bankruptcy Code from reconciling claims asserted against the Debtors or their estates and objecting to any such claims that should be reduced, reclassified or otherwise disallowed.

### **Approval of Repayment of DIP**

36. The Debtors are directed to distribute the cash proceeds, if any, of the Sale of the Purchased Assets to the DIP Lender (as defined in the Final DIP Order), in an amount up to the outstanding DIP Obligations. All other consideration (other than cash) shall be subject to the terms and conditions set forth in Section 2.5 of the Purchase Agreement.

### **Releases**

37. Effective as of the later of the (i) Closing of the Sale and (ii) satisfaction in full of all DIP Obligations by the Debtors pursuant to the terms of the DIP Documents and the Final DIP Order (the “**Debtor Release Effective Date**”), the Buyer, on its own behalf and on behalf of its predecessors, successors, heirs, and past, present and future subsidiaries and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits each of the Debtors and each of their estates, and each of their officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof (solely in their capacities as such) (collectively, the “**Debtor Released Parties**”), from any and all liability to the Buyer (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or

unliquidated, pending or threatened, arising in law or equity, in contract or tort, that the Buyer at any time had, now has or may have, or that its predecessors, successors or assigns at any time had or hereafter may have against any of the Debtor Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the Debtor Release Effective Date; provided, however, that the release set forth in this Paragraph 37 shall not release (i) any claims against or liabilities of a Debtor Released Party that a court of competent jurisdiction determines has resulted from such Debtor Released Party's bad faith, fraud, gross negligence, collusion or willful misconduct; (ii) the Ligand Milestone Payment (as defined in the Bidding Procedures Order); (iii) the Debtors from honoring their agreements with and obligations to the Buyer that survive the Closing as set forth in the Purchase Agreement, the Bidding Procedures Order, and/or this Sale Order; and (iv) the Debtors from honoring any of their continuing and/or ongoing obligations to the DIP Lender pursuant to the terms of the DIP Documents and the Final DIP Order.

38. Effective as of the Closing of the Sale ("**Buyer Release Effective Date**"), each of the Debtors and each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, and past, present and future subsidiaries and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits Buyer and its subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof (solely in their capacities as such) (collectively, the "**Buyer Released Parties**"), from any and all liability to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and

description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter may have against any of the Buyer Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the Buyer Release Effective Date; provided, however, that the release set forth in this Paragraph 38 shall not release (i) any claims against or liabilities of a Buyer Released Party that a court of competent jurisdiction determines has resulted from such Buyer Released Party's bad faith, fraud, gross negligence, collusion or willful misconduct; (ii) the Committee's rights to assert a Challenge during the Challenge Period (as such terms are defined in the Final DIP Order) pursuant to the terms and conditions of the Final DIP Order; (iii) the DIP Lender from honoring its obligations to the Debtors pursuant to the terms of the DIP Documents and/or the Final DIP Order; and (iv) Buyer from honoring any of its post-Closing obligations to the Debtors pursuant to the terms of the Purchase Agreement, the Bidding Procedures Order, and/or this Sale Order.

#### **Other Provisions**

39. This Order shall be binding in all respects upon all of the Debtors' creditors and equity-holders, all Contract Counterparties, all successors and assigns of the Debtors, and any of their respective affiliates and subsidiaries, any trustees, examiners, "responsible persons," or other fiduciaries appointed in the Chapter 11 Cases or upon a conversion of one or more of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code. The Purchase Agreement shall not be subject to rejection or avoidance under any circumstances.



40. The Purchase Agreement and any other documents ancillary thereto may be modified, amended, or supplemented by the parties thereto in a writing signed by the parties, in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

41. The transactions contemplated by the Purchase Agreement and this Order are undertaken by the Buyer without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not alter, affect, limit, or otherwise impair the validity of the Sale, unless such authorization and such Sale are duly stayed pending such appeal. The Buyer is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to, and hereby granted, the full rights, benefits, privileges and protections of section 363(m) of the Bankruptcy Code. As a good faith buyer of the Purchased Assets, the Buyer has not entered into an agreement with any other potential bidders and has not colluded with any potential or actual bidders, and the Sale may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

42. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

43. The failure to specifically include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized in its entirety. All of the provisions of this Order are non-severable and mutually dependent.

44. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, and any waivers and consents thereunder, and any and all disputes concerning or relating in any way to the Sale, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Buyer, (b) interpret, implement, and enforce the provisions of this Order and the Purchase Agreement, including but not limited to the injunctions and limitations of liability set forth in this Order, (c) protect the Buyer against any Claims and Interests in or against the Debtors or the Purchased Assets of any kind or nature whatsoever attaching to the net cash proceeds of the Sale as provided herein including, without limitation, to enjoin the commencement or continuation of any action seeking to impose successor liability or bulk sale liability; (d) enter any orders under sections 105, 363 and 365 of the Bankruptcy Code with respect to the Purchased Assets and the Assumed Contracts; (e) decide any disputes concerning this Order, the Purchase Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status nature and extent of the Purchased Assets and any Assumed Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Claims and Interests; (f) adjudicate any and all remaining issues concerning the Debtors' right and authority to assume and assign the Assumed Contracts and the rights and obligations of the Debtors and the Buyer with respect to such assignment and the existence of any default under any such Assumed Contract; (g) adjudicate any and all disputes concerning alleged pre-closing Claims and Interests in and to the Purchased Assets including without limitation the extent, validity, enforceability, priority, and nature of any and all such alleged Claims and Interests; (h) adjudicate

any and all disputes relating to the Debtors' right, title, or interest in the Purchased Assets and the proceeds thereof; and (i) re-open the Chapter 11 Cases to determine any of the foregoing.

45. For cause shown, this Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, but shall be effective and enforceable immediately upon entry, and the stays provided in Bankruptcy Rules 6004(h) and 6004(d) are hereby expressly waived and shall not apply. Accordingly, the Debtors and the Buyer are authorized and empowered to close the Sale immediately upon entry of this Order subject to the terms of the Purchase Agreement.

46. To the extent that this Order is inconsistent with the Purchase Agreement or any prior order or pleading with respect to the Motion in these Chapter 11 Cases, the terms of this Order shall govern.