

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X	:	
	:	:	
<b>In re</b>	:	:	<b>Chapter 11</b>
	:	:	
<b>INSYS THERAPEUTICS, INC., et al.,</b>	:	:	<b>Case No. 19-11292 (KG)</b>
	:	:	
<b>Debtors.<sup>1</sup></b>	:	:	<b>Jointly Administered</b>
	:	:	
	X		

**NOTICE OF SUCCESSFUL BIDDER AND SALE HEARING FOR CERTAIN ASSETS  
RELATING TO CBD FORMULATIONS, SYNDROS, AND BUPRENORPHINE**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On July 2, 2019, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered the *Order (A) Approving Bidding Procedures for Sale of Debtors’ Assets, (B) Scheduling Auction for and Hearing to Approve Sale of Debtors’ Assets, (C) Approving Form and Manner of Notice of Sale Auction, and Sale Hearing, (D) Approving Assumption and Assignment Procedures, and (E) Granting Related Relief* (the “**Bidding Procedures Order**”) (ECF No. 210),<sup>2</sup> in connection with the sale or disposition (each, a “**Sale Transaction**”) of the Debtors’ assets, including all executory contracts or unexpired non-residential real property leases of the Debtors (collectively, the “**Contracts and Leases**”), related to each of (i) Subsys, (ii) Syndros and other assets related to CBD, (iii) Epinephrine, (iv) Naloxone, (v) Buprenorphine, and other assets of the Debtors (collectively, the “**Assets**”), as further described therein.

The deadline for submitting Qualified Bids for the Assets was scheduled for **July 23, 2019 at 4:00 p.m. (ET)**, which deadline was extended pursuant to the Bidding Procedures Order to **July 26, 2019 at 4:00 p.m. (ET)** pursuant to the Debtors’ *Notice of Extension of Bid Deadline* (ECF No. 328).

The Auction with respect to the Debtors’ business of developing, manufacturing, and marketing the (i) Insys CBD formulations across current pre-clinical, clinical, third-party grants and investigator initiated study activities (including any future activities or indications), (ii) THC programs of Syndros oral dronabinol solution, and (iii) Buprenorphine products (collectively, the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors’ mailing address is 410 S. Benson Lane, Chandler, Arizona 85224.

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

“**Products**”), and certain equipment related to the Products (collectively with the Products, the “**Purchased Assets**”), was scheduled by the Debtors for August 7, 2019.<sup>3</sup>

On August 6, 2019, the Debtors’ advisors communicated to all Qualified Bidders and Potential Bidders that submitted bids for some or all of the Purchased Assets, the economic value of the highest Qualified Bid for the Purchased Assets, which was submitted by Chilion Group Holdings US, Inc. (the “**Purchaser**,” and the bid, the “**Chilion Bid**”) and determined based on such communications, and in consultation with the Committee, that designating the Purchaser as the Successful Bidder and the Chilion Bid as the Successful Bid and cancelling the Auction for the Purchased Assets was in the best interests of the Debtors’ estates. As a result, on August 6, 2019, to avoid further expense to the Debtors’ estates, the Debtors, in consultation with the Committee, cancelled the Auction for the Purchased Assets and filed the Debtors’ *Notice of (I) Cancellation of Auction for Certain of the Debtors’ Assets and (II) Rescheduled Auction for Other Assets* (ECF No. 403).

Accordingly, the Purchaser has been designated as the Successful Bidder and the Chilion Bid has been designated as the Successful Bid with respect to the sale of the Purchased Assets. Attached to the Proposed Sale Order (as defined herein) as **Exhibit “1”** is a copy of the executed Asset Purchase Agreement, dated August 6, 2019 (the “**Asset Purchase Agreement**”) between the Debtors and the Purchaser.

As part of the Purchased Assets, the Purchaser designated certain Contracts for assumption and assignment to the Purchaser (the “**Designated Contracts**”). The Designated Contracts are identified on the notice of designation (the “**Notice of Designation**”) attached hereto as **Exhibit “A”**.

The Debtors will file a notice with the Adequate Assurance Information for the Purchaser or affiliate, as applicable, as soon as reasonably practicable.

### **Important Dates and Deadlines<sup>4</sup>**

The Debtors intend to seek approval of the sale of the Purchased Assets to the Purchaser pursuant to the Asset Purchase Agreement at the Sale Hearing to be held on **August 22, 2019 at 2:00 p.m. (ET)**. A proposed form of order approving the sale of the Purchased Assets to the Purchaser and granting related relief (the “**Proposed Sale Order**”) is attached hereto as **Exhibit**

<sup>3</sup> The August 7, 2019 Auction was rescheduled from the initial date of August 5, 2019, pursuant to the *Notice of Rescheduled Auction* (ECF No. 395), and the *Notice of (I) Cancellation of Auction for Certain of the Debtors’ Assets and (II) Rescheduled Auction for Other Assets* (ECF No. 401).

<sup>4</sup> The deadline for Counterparties to the Designated Contracts listed on the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale*, dated July 9, 2019 (ECF No. 263) to file Cure Objections passed on **July 23, 2019**, except as otherwise extended by the Debtors in certain cases. The deadline for Counterparties to the Designated Contracts listed on the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale*, dated August 2, 2019 (ECF No. 388) to file Cure Objections is **August 16, 2019**.

**“B”**. To the extent any modifications are made to the Proposed Sale Order in advance of the Sale Hearing, such modifications will be presented to the Court at such hearing.

Any objection to adequate assurance of future performance with respect to any Designated Contracts (an **“Adequate Assurance Objection”**) must (i) be in writing; (ii) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; (iii) state, with specificity, the legal and factual bases thereof; (iv) include any appropriate documentation in support thereof; and (v) be filed with the Court and served on the Objection Recipients by **August 16, 2019 at 4:00 p.m. (ET)**, in accordance with the Bidding Procedures Order. All Adequate Assurance Objections not otherwise resolved by the parties will be heard at the Sale Hearing or at such later date to be scheduled by the Debtors in consultation with the Committee.

Any objections to (A) the proposed Sale Transaction, including any objection to the sale of the Purchased Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and entry of the Proposed Sale Order (a **“Sale Objection”**), must (i) be in writing; (ii) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; (iii) state, with specificity, the legal and factual bases thereof; (iv) include any appropriate documentation in support thereof; and (v) be filed with the Court and served on the Objection Recipients by **August 16, 2019 at 4:00 p.m. (ET)** (the **“Sale Objection Deadline”**), in accordance with the Bidding Procedures Order. All Sale Objections not otherwise resolved by the parties shall be heard at the Sale Hearing.

Any party who fails to file with the Court and serve on the Objection Recipients a Sale Objection by the Sale Objection Deadline may be forever barred from asserting, at the Sale Hearing or thereafter, any objection to the relief requested in the Motion, or to the consummation and performance of the Sale Transaction contemplated by the Asset Purchase Agreement, including the transfer of the Purchased Assets to the Purchaser, free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code.

Dated: August 8, 2019  
Wilmington, Delaware

/s/ Zachary I. Shapiro

RICHARDS, LAYTON & FINGER, P.A.

Mark D. Collins (No. 2981)

John H. Knight (No. 3848)

Paul N. Heath (No. 3704)

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*Attorneys for the Debtors*

*and Debtors in Possession*

**EXHIBIT A**  
**Notice of Designation**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re	X	
	:	<b>Chapter 11</b>
	:	
INSYS THERAPEUTICS, INC., <i>et al.</i> ,	:	<b>Case No. 19-11292 (KG)</b>
	:	
Debtors. <sup>1</sup>	:	<b>Jointly Administered</b>

**NOTICE OF DESIGNATION FOR ASSUMPTION AND  
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On August 8, 2019 the Debtors filed the *Notice of Successful Bidder and Sale Hearing for Certain Assets Relating to CBD Formulations, Syndros, and Buprenorphine* (the “**Notice of Successful Bidder**”),<sup>2</sup> which, among other things, noted that Chilion Group Holdings US, Inc. is the Successful Bidder for the Purchased Assets.

In accordance with the Notice of Successful Bidder and the Bidding Procedures Order, attached hereto as **Exhibit “1”** is a schedule of Designated Contracts that have been designated for assumption and assignment to the Purchaser pursuant to the terms of the Asset Purchase Agreement.

The listing of any contract or lease on **Exhibit “1”** is not an admission that such contract or lease is an executory contract or unexpired lease.

In accordance with Section 2.4 of the Asset Purchase Agreement, upon providing written notice to the Debtors, the Successful Bidder may remove any Designated Contracts from **Exhibit “1”** up to three (3) Business Days prior to the Closing.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors’ mailing address is 410 S. Benson Lane, Chandler, Arizona 85224.

<sup>2</sup> All capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Notice of Successful Bidder.

Dated: August 8, 2019  
Wilmington, Delaware

/s/ Zachary I. Shapiro

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*Attorneys for the Debtors  
and Debtors in Possession*

**EXHIBIT 1**  
**Designated Contracts**



**EXHIBIT 1****Designated Contracts**

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
9	ALPHA SCRIP INC	IC OPERATIONS LLC	MASTER SERVICE AGREEMENT	8/24/18	N/A
10	ALPHA SCRIP INC	INSYS THERAPEUTICS INC	BILATERAL CONFIDENTIAL DISCLOSURE AGREEMENT	6/13/18	N/A
55	AMERISOURCEBERGEN CORPORATION	INSYS THERAPEUTICS INC	INTENT TO RESCIND THE 5/31/2017 NOTICE OF TERMINATION OF THE DISTRIBUTION SERVICES AGREEMENT	N/A	N/A
56	AMERISOURCEBERGEN CORPORATION	INSYS THERAPEUTICS INC	MODIFICATION TO SECTION 1A OF THE AGREEMENT DTD 1/9/2017	1/13/17	N/A
57	AMERISOURCEBERGEN DRUG CORP	INSYS THERAPEUTICS INC	DISTRIBUTION SERVICES AGREEMENT DTD 1/1/2012	3/1/12	N/A
58	AMERISOURCEBERGEN DRUG CORP	INSYS THERAPEUTICS INC	FOURTH AMENDMENT TO DISTRIBUTION SERVICES AGREEMENT	7/26/17	N/A
59	AMERISOURCEBERGEN DRUG CORPORATION	INSYS THERAPEUTICS INC	DISTRIBUTION SERVICES AGREEMENT DTD 1/1/2012	3/1/12	N/A
60	AMERISOURCEBERGEN DRUG CORPORATION	INSYS THERAPEUTICS INC	AMENDMENT TO DISTRIBUTION AGREEMENT	1/2/13	N/A
61	AMERISOURCEBERGEN DRUG CORPORATION	INSYS THERAPEUTICS INC	AMENDMENT TO DISTRIBUTION AGREEMENT	7/31/13	N/A
62	AMERISOURCEBERGEN DRUG CORPORATION	INSYS THERAPEUTICS INC	AMENDMENT TO DISTRIBUTION SERVICES AGREEMENT	1/4/13	N/A
63	AMERISOURCEBERGEN DRUG CORPORATION	INSYS THERAPEUTICS INC	AMENDMENT TO DISTRIBUTION SERVICES AGREEMENT	7/31/13	N/A
64	AMERISOURCEBERGEN DRUG CORPORATION	INSYS THERAPEUTICS INC	TERMINATION OF DISTRIBUTION SERVICES AGREEMENT BETWEEN INSYS AND AMERICOURCEBERGEN	N/A	N/A
65	AMERISOURCEBERGEN DRUG CORPORATOIN	INSYS THERAPEUTICS INC	THIRD AMENDMENT TO DISTRIBUTION AGREEMENT	12/8/14	N/A
66	AMERISOURCEBERGEN SERVICES CORPORATION	INSYS THERAPEUTICS INC	ELECTRONIC PAYMENTS AGREEMENT DTD 12/20/2012	12/31/12	N/A
67	AMERISOURCES BERGEN DRUG CORP	INSYS THERAPEUTICS INC	DISTRIBUTION SERVICES AGREEMENT	3/1/12	1/1/14
130	AVELLA DEER VALLEY INC	INSYS THERAPEUTICS INC	PHARMACY SERVICES AGREEMENT	9/1/17	9/1/18
131	AVELLA OF DEER VALLEY INC	INSYS PHARMA INC	AUTHORIZED RETAIL PURCHASE AGREEMENT	7/22/16	7/19/18

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
132	AVELLA OF DEER VALLEY INC	INSYS PHARMA INC	AUTHORIZED RETAIL PURCHASE AGREEMENT	7/22/16	7/19/18
133	AVELLA OF DEER VALLEY INC	INSYS PHARMA INC	FIRST AMENDMENT TO AUTHORIZED RETAIL PURCHASE AGREEMENT	11/14/16	N/A
134	AVELLA OF DEER VALLEY INC	INSYS PHARMA INC	SECOND AMENDMENT AUTHORIZED RETAIL PURCHASE AGREEMENT	3/27/17	N/A
135	AVELLA OF DEER VALLEY INC	INSYS THERAPEUTICS INC	AUTHORIZED RETAIL AGREEMENT	6/16/15	6/15/17
136	AVELLA OF DEER VALLEY INC	INSYS THERAPEUTICS INC	PHARMACY SERVICES AGREEMENT	9/1/17	9/1/18
137	AVELLA SPECIALTY PHARMACY	INSYS THERAPEUTICS INC	CONFIDENTIALITY AGREEMENT	4/10/15	4/10/20
138	AXWAY INC	INSYS THERAPEUTICS INC	MUTUAL NONDISCLOSURE AGREEMENT	12/3/15	N/A
139	AXWAY INC	INSYS THERAPEUTICS INC	MUTUAL NON-DISCLOSURE AGREEMENT	12/3/15	N/A
140	AXWAY INC	INSYS THERAPEUTICS INC	SUBSCRIPTION & SERVICES AGREEMENT	4/29/16	N/A
141	AXWAY INC	INSYS THERAPEUTICS INC	TNT CLOUD IMPLEMENTATION - STATEMENT OF WORK	5/6/16	N/A
142	AXWAY INC	INSYS THERAPEUTICS INC	SAAS ORDER FORM	5/11/16	N/A
143	BIOCLINICA INC	INSYS DEVELOPMENT COMPANY INC	SOFTWARE LICENSE AND SERVICES AGREEMENT	3/28/18	N/A
144	BIOCLINICA INC	INSYS DEVELOPMENT COMPANY INC	AMENDMENT #1 TO WORK ORDER #1 DTD 3/26/2018	6/25/18	N/A
145	BIOCLINICA INC	INSYS DEVELOPMENT COMPANY INC	AMENDMENT #1 TO WORK ORDER #1 TO PROJECT # 10015824	6/25/18	N/A
146	BIOCLINICA INC	INSYS DEVELOPMENT COMPANY INC	AMENDMENT #2 TO WORK ORDER #1 DTD 3/28/2018	7/27/18	N/A
147	BIOCLINICA INC	INSYS DEVELOPMENT COMPANY INC	WORK ORDER #1	3/28/18	N/A
148	BIOCLINICA INC	INSYS THERAPEUTICS INC	3 WAY CONFIDENTIAL DISCLOSURE AGREEMENT	6/5/18	6/5/21
189	CAREMARKPCS HEALTH LLC	INSYS THERAPEUTICS INC	REBATE AGREEMENT	1/1/15	1/1/18
190	CAREMARKPCS HEALTH LLC	INSYS THERAPEUTICS INC	AMENDED & RESTATED FIRST AMENDMENT TO REBATE AGREEMENT	7/1/17	12/31/20
191	CAREMARKPCS HEALTH LLC	INSYS THERAPEUTICS INC	FIRST AMENDMENT TO REBATE AGREEMENT	1/1/18	12/31/20
192	CAREMARKPCS HEALTH LLC	INSYS THERAPEUTICS INC	SECOND AMENDMENT TO REBATE AGREEMENT	7/1/17	N/A
193	CAREMARKPCS HEALTH LLC	INSYS THERAPEUTICS INC	THIRD AMENDMENT TO REBATE AGREEMENT	12/1/17	N/A

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
194	CAREMARKPCS HEATLH LLC (CVS)	INSYS THERAPEUTICS INC	REBATE AGREEMENT (COMMERCIAL)	1/1/15	1/1/18
195	CAREMARKPCS HEATLH LLC (CVS)	INSYS THERAPEUTICS INC	REBATE AGREEMENT (MEDICARE D)	1/1/18	12/31/19
404	CLINEDGE LLC	INSYS DEVELOPMENT CO INC	MASTER SERVICES AGREEMENT	1/25/19	N/A
405	CLINEDGE LLC	INSYS DEVELOPMENT CO INC	CHANGE ORDER 1	3/22/19	N/A
406	CLINEDGE LLC	INSYS DEVELOPMENT CO INC	SCOPE OF WORK 2	3/20/19	N/A
407	CLINEDGE LLC	INSYS THERAPEUTICS INC	CONFIDENTIALITY AGREEMENT	8/26/16	N/A
408	CLINEDGE LLC	INSYS THERAPEUTICS INC	CONFIDENTIALITY AGREEMENT	12/7/18	N/A
409	CLINEDGE LLC	INSYS THERAPEUTICS INC	CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT	2/24/15	2/23/20
410	CLINEDGE LLC	INSYS THERAPEUTICS INC	CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT DTD 2/23/2015	2/24/15	2/24/20
453	CVS CAREMARK PART D SERVICES LLC	INSYS THERAPEUTICS INC	MEDICARE PART D PROGRAM - REBATE AGREEMENT	1/1/18	12/31/18
454	CVS CAREMARK PART D SERVICES LLC	INSYS THERAPEUTICS INC	FIRST AMENDMENT TO MEDIACARE PART D PROGRAM REBATE AGREEMENT	1/1/19	12/31/19
455	CVS/CAREMARK	INSYS	CATEGORY REVIEW PROCESS	1/18/19	N/A
456	CVS/CAREMARK	INSYS THERAPEUTICS INC	CATEGORY REVIEW PROCESS	1/12/18	N/A
457	CVS/CAREMARK	INSYS THERAPEUTICS INC	CATEGORY REVIEW PROCESS	7/3/18	N/A
458	CVS/CAREMARK	INSYS THERAPEUTICS INC	CATEGORY REVIEW PROCESS	1/11/19	N/A
481	DUNN MEADOW LLC	INSYS PHARMA INC	AUTHORIZED RETAIL PURCHASE AGREEMENT	7/11/16	7/11/18
482	DUNN MEADOW LLC	INSYS PHARMA INC	AMENDMENT NUMBER 1 TO AUTHORIZED RETAIL PURCHASE AGREEMENT	7/18/16	N/A
483	DUNN MEADOW LLC	INSYS PHARMA INC	SECOND AMENDMENT AUTHORIZED RETAIL PURCHASE AGREEMENT	8/17/16	N/A
484	DUNN MEADOW LLC	INSYS THERAPEUTICS INC	AUTHORIZED RETAIL PURCHASE AGREEMENT	5/12/17	3/30/19
485	DUNN MEADOW LLC	INSYS THERAPEUTICS INC	AUTHORIZED RETAIL PURCHASE AGREEMENT	7/11/17	7/10/19
486	DUNN MEADOW LLC	INSYS THERAPEUTICS INC	AUTHORIZED RETAIL PURCHASE AGREEMENT	7/11/17	7/10/19

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
487	DUNN MEADOW LLC	INSYS THERAPEUTICS INC	CONFIDENTIALITY AGREEMENT	4/28/16	N/A
488	DUNN MEADOW LLC	INSYS THERAPEUTICS INC	FIRST AMENDMENT-AUTHORIZED RETAIL PURCHASE AGREEMENT	3/23/18	N/A
500	EXPRESS SCRIPTS INC	INSYS THERAPEUTICS INC	INFLATION AGREEMENT	12/19/17	12/31/19
501	EXPRESS SCRIPTS INC	INSYS THERAPEUTICS INC	PREFERRED SAVINGS GRID REBATE PROGRAM AGREEMENT	9/29/17	10/1/19
502	EXPRESS SCRIPTS INC	INSYS THERAPEUTICS INC	AMENDMENT TO INFLATION AGREEMENT	11/27/18	12/31/21
503	EXPRESS SCRIPTS INC	INSYS THERAPEUTICS INC	AMENDMENT TO PREFERRED SAVINGS GRID REBATE PROGRAM AGREEMENT	1/8/18	N/A
504	EXPRESS SCRIPTS INC	INSYS THERAPEUTICS INC	AMENDMENT TO PREFERRED SAVINGS GRID REBATE PROGRAM AGREEMENT	12/13/18	N/A
505	EXPRESS SCRIPTS INC (ESI)	INSYS THERAPEUTICS INC	INFLATION AGREEMENT (MEDICARE D)	12/19/17	12/31/19
506	EXPRESS SCRIPTS INC (ESI)	INSYS THERAPEUTICS INC	PREFERRED SAVINGS GRID REBATE PROGRAM AGREEMENT	9/29/17	N/A
507	EXPRESS SCRIPTS SENIOR CARE HOLDINGS INC	INSYS THERAPEUTICS INC	LETTER OF AGREEMENT DTD 1/24/2019	2/16/19	N/A
508	EXPRESS SCRIPTS SENIOR CARE HOLDINGS INC	INSYS THERAPEUTICS INC	MEDICARE PART D REBATE AGREEMENT DTD 1/24/2019	2/6/19	N/A
509	FOG BREAK LTD	INSYS THERAPEUTICS INC	TEMPORARY CERTIFICATE OF OCCUPANCY CITY OF ROUND ROCK	10/27/16	N/A
510	FOG BREAK LTD	INSYS THERAPEUTICS INC	MEMORANDUM OF LEASE	8/30/13	N/A
511	FOG BREAK LTD	INSYS THERAPEUTICS INC	OPTION TO PURCHASE REAL ESTATE	8/30/13	N/A
512	FOG BREAK LTD	INSYS THERAPEUTICS INC	LEASE AGREEMENT	8/28/13	8/28/23
513	FOG BREAK LTD	INSYS THERAPEUTICS INC	LEASE AGREEMENT	8/29/13	8/29/23
514	FOG BREAK LTD	INSYS THERAPEUTICS INC	FIRST AMENDMENT TO LEASE AGREEMENT	11/25/15	4/1/29
515	FOG BREAK LTD	INSYS THERAPEUTICS INC	INTERMEDIARY PROPOSAL DTD 6/11/2013	N/A	N/A
516	FOG BREAK LTD	NO DEBTOR INDICATED	PROPERTY TAX ADMINISTRATIVE SERVICES AGREEMENT	N/A	12/31/18
517	FOG BREAK LTD	NO DEBTOR INDICATED	PROPERTY TAX ADMINISTRATIVE SERVICES AGREEMENT	4/4/16	12/31/17
518	FOG BREAK LTD	NO DEBTOR INDICATED	PROPERTY TAX ADMINISTRATIVE SERVICES AGREEMENT	3/7/18	12/31/18

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
519	FOG BREAK LTD	NO DEBTOR INDICATED	PROPERTY TAX ADMINISTRATIVE SERVICES AGREEMENT CONTINGENCY PLAN	3/7/18	12/31/18
520	FOG BREAK LTD	NO DEBTOR INDICATED	APPOINTMENT OF AGENT FOR PROPERTY TAX MATTERS FORM 50-162	N/A	N/A
521	FOG BREAK LTD	NO DEBTOR INDICATED	APPOINTMENT OF AGENT FOR PROPERTY TAX MATTERS FORM 50-162	3/7/18	N/A
534	FULL SPECTRUM ANALYTICS INC	INSYS DEVELOPMENT COMPANY INC	SERVICE AGREEMENT TERMS AND CONDITIONS	12/26/18	N/A
535	FULL SPECTRUM ANALYTICS INC	INSYS DEVELOPMENT COMPANY INC	MODIFICATIONS TO THE MAINTENANCE AGREEMENT DTD 5/1/2019	5/9/19	12/31/23
536	FULL SPECTRUM ANALYTICS INC	INSYS DEVELOPMENT COMPANY INC	QUOTATION	12/26/18	10/8/23
537	FULL SPECTRUM ANALYTICS INC	INSYS DEVELOPMENT COMPANY INC	QUOTATION	2/1/19	10/8/23
538	FULL SPECTRUM ANALYTICS INC	INSYS DEVELOPMENT COMPANY INC	QUOTATION	2/4/19	12/31/23
560	INNOVATIX LLC	INSYS THERAPEUTICS INC	GROUP PURCHASING AGREEMENT PHARMACEUTICALS	6/6/14	6/30/17
561	INNOVATIX LLC	INSYS THERAPEUTICS INC	AMENDMENT TO GROUP PURCHASING AGREEMENT	10/15/14	N/A
562	INNOVATIX LLC	INSYS THERAPEUTICS INC	AMENDMENT TO GROUP PURCHASING AGREEMENT	6/19/17	6/30/18
563	INNOVATIX LLC	INSYS THERAPEUTICS INC	SECOND AMENDMENT TO GROUP PURCHASING AGREEMENT	7/20/17	N/A
572	INTEGRICHAIN DYNAMIC NEXTGEN ANALYTICS (DNA)	INSYS THERAPEUTICS INC	SUBSCRIPTION PROPOSAL	5/9/12	N/A
573	INTEGRICHAIN INC	INSYS THERAPEUTICS INC	MASTER SUBSCRIPTION AGREEMENT	5/9/12	N/A
574	INTEGRICHAIN INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK DTD 7/5/2016	8/16/16	N/A
574	INTEGRICHAIN INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK DTD 7/5/2016	8/16/16	10/31/18
576	INTEGRICHAIN INC	INSYS THERAPEUTICS INC	PROPOSAL DTD 5/2/2012	5/9/12	N/A
577	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK #2436131	6/6/18	6/30/18
578	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK #2460209	12/21/18	N/A
579	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK #2484225	12/20/18	N/A
580	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK #2495418	12/20/18	N/A

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
581	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK #2496318	2/4/19	6/30/19
582	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK FOR OPPORTUNITY #1263519	6/22/18	12/31/19
583	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK FOR OPPORTUNITY #2484225	12/20/18	6/1/19
584	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK FOR OPPORTUNITY #2495418	12/26/18	6/30/19
585	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK FOR OPPORTUNITY #2496318 DTD 12/31/2018	2/4/19	N/A
586	IQVIA INC	INSYS THERAPEUTICS INC	USER CUSTOMER AGREEMENT FOR AMA PHYSICIAN PROFESSIONAL DATA	5/30/18	12/31/18
587	IQVIA INC	INSYS THERAPEUTICS INC	USER-CUSTOMER AGREEMENT	5/30/18	12/31/18
588	IQVIA INC	INSYS THERAPEUTICS INC	USER-CUSTOMER AGREEMENT FOR AMA PHYSICIAN PROFESSIONAL DATA	5/30/18	12/31/18
589	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK	5/4/18	N/A
590	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK	6/6/18	N/A
591	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK	6/22/18	N/A
592	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK	8/8/18	N/A
593	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK	8/24/18	N/A
594	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK	9/21/18	N/A
595	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK	12/20/18	N/A
596	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK	12/21/18	N/A
597	IQVIA INC	INSYS THERAPEUTICS INC	STATEMENT OF WORK	2/4/19	N/A
598	IQVIA RDS INC	INSYS DEVELOPMENT COMPANY INC	AMENDMENT NUMBER 03	2/22/18	N/A
599	IQVIA RDS INC	INSYS DEVELOPMENT COMPANY INC	AMENDMENT NUMBER 03 INS011-14-030	2/22/18	N/A
613	LIFELINES NEURODIAGNOSTIC SYSTEMS INC	INSYS DEVELOPMENT COMPANY INC	MASTER SERVICES AGREEMENT	2/7/18	2/7/23
614	LIFELINES NEURODIAGNOSTIC SYSTEMS INC	INSYS DEVELOPMENT COMPANY INC	VIDEO EGG SERVICES DTD 11/07/2018	11/12/18	N/A
615	LIFELINES NEURODIAGNOSTIC SYSTEMS INC	INSYS THERAPEUTICS INC	CONFIDENTIALITY AGREEMENT	1/25/18	1/25/20

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
616	LIFELINES NEURODIAGNOSTIC SYSTEMS INC	INSYS THERAPEUTICS INC	RE: LETTER OF INTENT FOR SERVICES WITH RESPECT TO PROTOCOL NUMBER INS011-16-082	1/29/18	N/A
617	LIFELINES NEURODIAGNOSTIC SYSTEMS INC	INSYS THERAPEUTICS INC	VIDEO-EEG SERVICES	2/7/18	N/A
720	NOSCO	INSYS	PRICING PROPOSAL DTD 7/14/2016	7/22/16	N/A
721	NOSCO	INSYS THERAPEUTICS INC	CARTONS PRICING PROPOSAL	N/A	N/A
722	NOSCO	INSYS THERAPEUTICS INC	CARTONS PRICING PROPOSAL	2/17/12	N/A
723	NOSCO	INSYS THERAPEUTICS INC	CARTONS PRICING PROPOSAL	3/14/12	N/A
724	NOSCO	INSYS THERAPEUTICS INC	CARTONS PRICING PROPOSAL	3/31/12	N/A
725	NOSCO	INSYS THERAPEUTICS INC	INSERT PRICING PROPOSAL	7/22/16	N/A
726	NOSCO	INSYS THERAPEUTICS INC	INSERT PRICING PROPOSAL	3/14/12	N/A
727	NOSCO	INSYS THERAPEUTICS INC	ON DEMAND SOLUTIONS PRICING PROPOSAL	3/14/12	N/A
728	NOSCO	INSYS THERAPEUTICS INC	ROLL LABEL PRICING PROPOSAL	3/14/12	N/A
729	NOSCO	INSYS PHARMA	PRICING PROPOSAL DTD 1/30/2012	N/A	N/A
730	NOSCO	INSYS THERAPEUTICS INC	PURCHASE ORDER DTD 2/17/2012	2/17/12	N/A
731	NOSCO	INSYS THERAPEUTICS INC	PURCHASE ORDER DTD 3/14/2012	3/14/12	N/A
732	NOSCO	INSYS THERAPEUTICS INC	PURCHASE ORDER DTD 3/16/2012	2/16/12	N/A
733	NOSCO	INSYS THERAPEUTICS INC	PURCHASE ORDER DTD 3/5/2012	3/5/12	N/A
734	NOSCO INC	INSYS PHARMA INC	MASTER SERVICES AGREEMENT	8/9/16	8/8/21
735	NOSCO INC	INSYS THERAPEUTICS INC	CARTONS PRICING PROPOSAL	3/14/12	N/A
736	NOSCO INC	INSYS THERAPEUTICS INC	INSERT PRICING PROPOSAL	2/16/12	N/A
737	NOSCO INC	INSYS THERAPEUTICS INC	INSERT PRICING PROPOSAL	3/14/12	N/A
738	NOSCO INC	INSYS THERAPEUTICS INC	INSERT PRICING PROPOSAL DTD 3/14/2012	2/16/12	N/A
739	NOSCO INC	INSYS THERAPEUTICS INC	INSERTS PRICING PROPOSAL	3/5/12	N/A
740	NOSCO INC	INSYS THERAPEUTICS INC	INSERTS PRICING PROPOSAL	3/31/12	N/A
741	NOSCO INC	INSYS THERAPEUTICS INC	ON DEMAND SOLUTIONS PRICING PROPOSAL	3/14/12	N/A
742	NOSCO INC	INSYS THERAPEUTICS INC	ROLL LABEL PRICING PROPOSAL	3/5/12	N/A

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
743	NOSCO INC	INSYS THERAPEUTICS INC	ROLL LABEL PRICING PROPOSAL	3/14/12	N/A
744	NOSCO INC	INSYS THERAPEUTICS INC	ROLL LABERL PRICING PROPOSAL	3/31/12	N/A
801	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	GROUP PURCHASING AGREEMENT	3/25/15	6/30/18
802	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	GROUP PURCHASING AGREEMENT PHARMACEUTICALS	5/14/14	6/30/15
803	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	GROUP PURCHASING AGREEMENT PHARMACEUTICALS	3/25/15	6/30/18
804	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO 1 TO GROUP PURCHASING AGREEMENT	4/2/15	N/A
805	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO 10 TO GROUP PURCHASING AGREEMENT	6/14/18	N/A
806	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO 12 TO GROUP PURCHASING AGREEMENT	1/1/18	N/A
807	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO 2 TO GROUP PURCHASING AGREEMENT	7/10/15	N/A
808	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO 4 TO GROUP PURCHASING AGREEMENT	1/1/16	N/A
809	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO 5 TO GROUP PURCHASING AGREEMENT	9/12/16	N/A
810	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO 6 TO GROUP PURCHASING AGREEMENT	12/6/17	N/A
811	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO 7 TO GROUP PURCHASING AGREEMENT	7/25/17	N/A
812	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO 8 TO GROUP PURCHASING AGREEMENT	9/21/17	N/A
813	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO. 1	4/2/15	N/A
814	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO. 2	7/10/15	N/A
815	PREMIER HEALTHCARE ALLIANCE LP	INSYS THERAPEUTICS INC	AMENDMENT NO.12 TO GROUP PURCHASING AGREEMENT	1/18/19	N/A
860	RECEPT PHARMACY LP	INSYS THERAPEUTICS INC	AUTHORIZED RETAIL PURCHASE AGREEMENT	5/30/17	5/25/19
861	RECEPT PHARMACY LP	INSYS THERAPEUTICS INC	MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT	N/A	9/2/19
884	ROCHESTER DRUG COOPERATIVE INC	INSYS PHARMA INC	AMENDMENT NO.1 TO AUTH DISTRIBUTOR	7/25/16	N/A



#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
			AGREEMENT		
885	ROCHESTER DRUG COOPERATIVE INC	INSYS THERAPEUTICS INC	AUTHORIZED DISTRIBUTOR AGREEMENT	3/14/12	4/1/14
886	ROCHESTER DRUG COOPERATIVE INC	INSYS THERAPEUTICS INC	AUTHORIZED DISTRIBUTOR AGREEMENT	3/14/12	4/1/14
887	ROCHESTER DRUG COOPERATIVE INC	INSYS THERAPEUTICS INC / INSYS PHARMA INC	ASSIGNMENT AGREEMENT	1/1/16	N/A
888	ROCHESTER DRUG COOPERATIVE INC	INSYS THERAPEUTICS INC / INSYS PHARMA INC	ASSIGNMENT AGREEMENT	7/25/16	N/A
925	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	DESTRUCTION PROPOSAL INS011-15-054 DTD 11/19/2015	12/30/15	N/A
926	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	LOGISTICS PROPOSAL FOR INS011-16-082 DTD 2/27/2018	3/20/18	N/A
927	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	LOGISTICS PROPOSAL FOR PROTOCOL: INS011-14-029 DTD 1/26/2016	1/28/16	N/A
928	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	LOGISTICS PROPOSAL FOR PROTOCOL: INS011-14-029 DTD 12/22/2015	12/29/15	N/A
929	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	LOGISTICS PROPOSAL FOR PROTOCOL: INS011-15-054 DTD 12/22/2015	12/29/15	N/A
930	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	LOGISTICS PROPOSAL FOR PROTOCOL: INS011-17-103 DTD 10/26/2017	11/7/17	N/A
931	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	LOGISTICS PROPOSAL FOR PROTOCOL: INS011-17-103 DTD 8/15/2017	8/17/17	N/A
932	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	LOGISTICS PROPOSAL FOR PROTOCOL: INS011-17-113 DTD 10/26/2017	11/7/17	N/A
933	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	MASTER SERVICES AGREEMENT FOR CLINICAL TRIAL SERVICES	3/3/16	N/A
935	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING AND LOGISTICS PROPOSAL FOR PROTOCOL: ISY IIT US DTD 1/22/2016	1/26/16	N/A
936	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING AND LOGISTICS PROPOSAL INS011-16-082 DTD 9/17/2018	10/11/18	N/A
937	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR INS011-16-085 DTD 11/30/2018	12/13/18	N/A
938	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR INS011-17-115 DTD 2/12/2018	2/16/18	N/A

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
939	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR INS011-17-115 DTD 5/9/2018	5/17/18	N/A
940	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: IIT CAN DTD 5/23/2016	5/31/16	N/A
941	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: INS011-14-030 DTD 1/12/2016	1/20/16	N/A
942	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: INS011-14-030 DTD 1/15/2016	1/20/16	N/A
943	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: INS011-14-030 DTD 2/17/2016	2/17/16	N/A
944	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: INS011-14-030 DTD 4/18/2016	5/2/16	N/A
945	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: INS011-14-030 DTD 5/20/2016	5/26/16	N/A
946	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: INS011-14-030 DTD 5/23/2016	5/26/16	N/A
947	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: INS011-14-030 DTD 5/24/2016	5/26/16	N/A
948	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: INS011-14-030 DTD 5/3/2016	5/16/16	N/A
949	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: INS011-15-054 DTD 3/23/216	3/29/16	N/A
950	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL FOR PROTOCOL: INS011-16-085 DTD 2/12/2018	2/14/18	N/A
951	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL INS011-16-082 DTD 10/12/2018	10/26/18	N/A
952	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL INS011-16-082 DTD 10/9/2018	10/26/18	N/A
953	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL INS011-16-082 DTD 7/19/2018	7/27/18	N/A
954	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL INS011-16-085 DTD 10/5/2018	10/11/18	N/A
955	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL INS011-17-115 DTD 12/14/2018	1/11/19	N/A
956	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PROCUREMENT PROPOSAL INS011-17-113 DTD 1/15/2019	2/7/19	N/A

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
957	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	QP AUDIT FOR INS011-16-082 DTD 8/20/2018	8/24/18	N/A
958	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	AMENDMENT TO MASTER SERVICES AGREEMENT FOR CLINICAL TRIAL STUDIES	12/2/16	N/A
959	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PROPOSAL FOR PROTOCOL: INS011-14-030 DTD 12/18/2015	12/18/15	N/A
960	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	QUOTATION ISY14108781 R4 DTD 1/20/2016	1/26/16	N/A
961	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	QUOTATION ISY14108781 R5 DTD 4/21/2016	6/1/16	N/A
963	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL QUOTE NO. ISY180110456 R2 A2 DTD 10/5/2018	10/11/18	N/A
964	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL QUOTE NO. ISY180110457 R2 A2 DTD 12/14/2018	1/11/19	N/A
965	SHARP CLINICAL SERVICES INC	INSYS DEVELOPMENT COMPANY INC	PACKAGING PROPOSAL QUOTE# ISY170810273 R4 A3 DTD 7/19/2018	7/27/18	N/A
966	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS	DESTRUCTION PROPOSAL FOR PROTOCOL: INS-004-15-059 DTD 11/3/2015	11/23/15	N/A
967	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS	LOGISTICS PROPOSAL FOR PROTOCOL: INS-004-15-059 DTD 11/9/2015	11/12/15	N/A
973	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS	PROPOSAL FOR PROTOCOL: INS011-14-029 DTD 11/18/2015	11/23/15	N/A
974	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS	PROPOSAL FOR PROTOCOL: INS011-14-029 DTD 5/19/2015	7/27/15	N/A
975	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS	PROPOSAL FOR PROTOCOL: INS011-14-030 DTD 11/18/2015	11/23/15	N/A
976	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS INC	3- WAY CONFIDENTIALITY DISCLOSURE AGREEMENT	9/22/17	N/A
977	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS INC	3- WAY CONFIDENTIALITY DISCLOSURE AGREEMENT	10/26/17	N/A
978	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS INC	3-WAY CONFIDENTIAL DISCLOSURE AGREEMENT	N/A	N/A
979	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS INC	3-WAY CONFIDENTIAL DISCLOSURE AGREEMENT	6/6/18	3/13/21
980	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS INC	PACKAGING AND LOGISTICS PROPOSAL FOR INS004-17-110 DTD 10/18/2017	10/27/17	N/A
981	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS INC	PACKAGING AND LOGISTICS PROPOSAL FOR PROTOCOL: INS011-16-082	10/13/17	N/A

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
			DTD 10/10/2017		
982	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS INC	PACKAGING AND LOGISTICS PROPOSAL FOR PROTOCOL: INS011-16-082 DTD 11/20/2017	11/27/17	N/A
983	SHARP CLINICAL SERVICES INC	INSYS THERAPEUTICS INC	PACKAGING AND LOGISTICS PROPOSAL INS011-16-082 DTD 2/6/2018	3/23/18	N/A
984	SHARP CORPORATION	INSYS THERAPEUTICS INC	CONFIDENTIALITY DISCLOSURE AGREEMENT	5/30/14	5/27/19
990	SMITH DRUG COMPANY	INSYS THERAPEUTICS INC	AUTHORIZED DISTRIBUTOR AGREEMENT	5/29/12	3/1/14
991	SMITH DRUG COMPANY	INSYS THERAPEUTICS INC	AUTHORIZED DISTRIBUTOR AGREEMENT	5/29/12	3/1/14
992	SMITH DRUG COMPANY	INSYS THERAPEUTICS INC	AUTHORIZED DISTRIBUTOR AGREEMENT	5/29/12	3/1/14
1207	Sutter Bay	INSYS THERAPEUTICS INC	SECOND AMENDMENT TO SPONSORED RESEARCH AGREEMENT	5/11/18	N/A
1208	Sutter Bay	INSYS THERAPEUTICS INC	THIRD AMENDMENT TO SPONSORED RESEARCH AGREEMENT	6/7/18	N/A
1209	Sutter Bay	INSYS THERAPEUTICS INC	SPONSORED RESEARCH AGREEMENT (INCLUDING ANY AMENDMENTS AND ADDENDUMS THERETO)	7/28/14	N/A
1210	Sutter Bay	INSYS THERAPEUTICS INC	EXCLUSIVE LICENSE AGREEMENT	7/28/14	N/A
1001	UNITED BIOSOURCE LLC	INSYS DEVELOPMENT COMPANY INC	CONSULTING AGREEMENT	5/10/18	4/26/19
1002	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS	AMENDMENT 6 TO SOW UNDER MASTER SERVICES AGREEMENT	8/18/14	N/A
1003	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS	AMENDMENT NO. 8 TO SOW UNDER MASTER SERVICES AGREEMENT	11/11/14	N/A
1004	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC	STATEMENT OF WORK #12TRI11454	2/14/18	12/31/20
1005	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC	CONFIDENTIALITY AGREEMENT	3/9/17	N/A
1006	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC	AMENDMENT 1 TO SOW UNDER MASTER SERVICES AGREEMENT	4/20/15	N/A
1007	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC	AMENDMENT NO 3 TO THE MASTER SERVICES AGREEMENT	4/20/15	N/A
1008	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC	AMENDMENT NO 8 TO THE SOW	11/17/14	N/A
1009	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC	NOTICE OF EXTENSION OF TERMINATION	N/A	N/A

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
1010	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC (F/K/A INSYS THERAPEUTICS)	STATEMENT OF WORK #12TRI11454	3/14/18	12/31/20
1011	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC (F/K/A INSYS THERAPEUTICS)	AMENDMENT 2 TO SOW UNDER MASTER SERVICES AGREEMENT	1/6/16	N/A
1012	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC (F/K/A INSYS THERAPEUTICS)	AMENDMENT 4 TO SOW UNDER MASTER SERVICES AGREEMENT	2/27/17	N/A
1013	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC (F/K/A INSYS THERAPEUTICS)	AMENDMENT 5 TO SOW UNDER MASTER SERVICES AGREEMENT	6/28/17	N/A
1014	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC (F/K/A INSYS THERAPEUTICS)	AMENDMENT 5 TO THE MASTER SERVICES AGREEMENT	6/26/17	N/A
1015	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC (F/K/A INSYS THERAPEUTICS)	AMENDMENT 6 TO SOW UNDER MASTER SERVICES AGREEMENT	12/14/17	N/A
1016	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC (F/K/A INSYS THERAPEUTICS)	AMENDMENT 7 TO SOW UNDER MASTER SERVICES AGREEMENT	N/A	N/A
1017	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC (F/K/A INSYS THERAPEUTICS)	AMENDMENT 7 TO SOW UNDER MASTER SERVICES AGREEMENT	1/24/18	N/A
1018	UNITED BIOSOURCE LLC	INSYS THERAPEUTICS INC / IPSC LLC	CHANGE ORDER # 1 INSYS HOME HEALTH EDUCATOR PROGRAM	4/24/18	4/7/19
1019	UNITED BIOSOURCE LLC	IPSC LLC	MASTER SERVICES AGREEMENT	3/28/18	3/22/21
1020	UNITED BIOSOURCE LLC	IPSC LLC	SERVICES AGREEMENT	6/1/17	4/7/18
1021	UNITED BIOSOURCE LLC	IPSC LLC	STATEMENT OF WORK # 12ING1800051	5/3/18	4/3/19
1022	UNITED BIOSOURCE LLC	IPSC LLC	AMENDMENT # 1	4/20/18	N/A
1023	UNITED BIOSOURCE LLC	IPSC LLC	NOTICE OF TERMINATION OF SERVICES AGREEMENT	1/14/19	N/A
1032	VIZIENT	NO DEBTOR INDICATED	INDIRECT ADDING/CHANGE ITEMS	N/A	N/A
1033	VIZIENT SUPPLY LLC	INSYS THERAPEUTICS INC	ADDENDUM FOR PHARMACEUTICAL PRODUCTS	11/30/18	6/30/20
1034	VIZIENT SUPPLY LLC	INSYS THERAPEUTICS INC	ADDENDUM TO PHARMACY SUPPLIER AGREEMENT	11/30/18	N/A
1035	VIZIENT SUPPLY LLC	INSYS THERAPEUTICS INC	PHARMACY SUPPLIER AGREEMENT	7/7/17	7/1/20

#*	Counterparty	Debtor Counterparty	Description	Executed Date	Expiration Date
1036	VIZIENT SUPPLY LLC	INSYS THERAPEUTICS INC	PHARMACY SUPPLIER AGREEMENT	7/7/17	7/1/20
1183	XOGENE SERVICES LLC	INSYS DEVELOPMENT COMPANY INC	STATEMENT OF WORK # 3 DTD 7/24/2016	7/28/17	N/A
1184	XOGENE SERVICES LLC	INSYS DEVELOPMENT COMPANY INC	STATEMENT OF WORK # 4 DTD 6/20/2018	7/23/18	7/24/19
1185	XOGENE SERVICES LLC	INSYS DEVELOPMENT COMPANY INC	STATEMENT WORK #4 DTD 06/20/18	7/23/18	7/24/19
1186	XOGENE SERVICES LLC	INSYS THERAPEUTICS INC	MASTER SERVICES AGREEMENT	10/26/15	8/1/20
1187	XOGENE SERVICES LLC	INSYS THERAPEUTICS INC	STATEMENT OF WORK # 1 DTD 8/1/2015	10/26/15	N/A
1188	XOGENE SERVICES LLC	INSYS THERAPEUTICS INC	STATEMENT OF WORK # 2 DTD 7/1/2016	7/6/16	N/A

**EXHIBIT B**  
**Proposed Sale Order**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X		
	:		
<b>In re</b>	:		<b>Chapter 11</b>
	:		
<b>INSYS THERAPEUTICS, INC., et al.,</b>	:		<b>Case No. 19-11292 (KG)</b>
	:		
<b>Debtors.<sup>1</sup></b>	:		<b>Jointly Administered</b>
	:		
	X		

**ORDER (1) APPROVING ASSET PURCHASE AGREEMENT  
BETWEEN INSYS THERAPEUTICS, INC. AND CHILION GROUP  
HOLDINGS US, INC., (2) APPROVING SALE OF THE PURCHASED  
ASSETS RELATING TO CBD FORMULATIONS, SYNDROS, AND  
BUPRENORPHINE, FREE AND CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES AND OTHER INTERESTS PURSUANT TO  
BANKRUPTCY CODE SECTIONS 105 AND 363(b), (f) AND (m),  
(3) APPROVING ASSUMPTION AND ASSIGNMENT OF CERTAIN  
CONTRACTS AND LEASES PURSUANT TO BANKRUPTCY CODE  
SECTIONS 363 AND 365, (4) DETERMINING THE AMOUNTS NECESSARY  
TO CURE SUCH EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
AND OTHER LIABILITIES, AND (5) GRANTING RELATED RELIEF**

The Court having considered the *Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors' Assets, (B) Scheduling Auction for and Hearing to Approve Sale of Debtors' Assets, (C) Approving Form and Manner of Notice of Sale, Auction, and Sale Hearing, (D) Approving Assumption and Assignment Procedures, and (E) Granting Related Relief; and (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (ECF No. 32) (the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors' mailing address is 410 South Benson Lane, Chandler, Arizona 85224.



“**Motion**”),<sup>2</sup> filed by Insys Therapeutics, Inc. and its affiliated debtors and debtors in possession (the “**Debtors**”) in the above-captioned cases (the “**Chapter 11 Cases**”), seeking, among other things, one or more orders, (i) authorizing and approving the sale of substantially all of the Debtors’ assets (the “**Assets**,” and each sale a “**Transaction**”), free and clear of all liens, claims, interests, and encumbrances, except certain permitted encumbrances as determined by the Debtors and any purchaser of the Assets, with liens, if any, to attach to the proceeds of the applicable Transaction(s), (ii) authorizing and approving the assumption and assignment of proposed assumed executory contracts and unexpired personal property leases (collectively, the “**Proposed Assumed Contracts**”) in connection with the Sale Transaction(s), and (iii) granting related relief, and having considered the Long Declaration and the Yearley Declaration (the “**Declarations**”); and the Court having entered this Court’s prior order, dated July 2, 2019 (ECF No. 210) (the “**Bidding Procedures Order**”), approving competitive bidding procedures for the Assets (the “**Bidding Procedures**”) and granting certain related relief; and Chilion Group Holdings US, Inc. (the “**Buyer**”) having submitted the highest or otherwise best bid for the Debtors’ business of developing, manufacturing, and marketing the (i) INSYS CBD formulations across current pre-clinical, clinical, third-party grants and investigator initiated study activities (including any future activities or indications), (ii) THC programs of Syndros oral dronabinol solution, and (iii) Buprenorphine products (the “**Products**”), and certain equipment related to the Products (collectively with the Products, the “**Purchased Assets**”), as reflected in the Asset Purchase Agreement (as defined below); and a hearing having been held on August 22, 2019 (the “**Sale Hearing**”) to consider approval of the Asset Purchase Agreement and the Transaction with the Buyer (the “**Sale Transaction**”); and the Court having reviewed and considered (i) the

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<sup>2</sup> Capitalized terms used herein but not otherwise defined have the meanings given to them in the Motion or the Asset Purchase Agreement, as applicable.

Motion and the exhibits thereto, (ii) the Declarations, (iii) the Asset Purchase Agreement, dated as of August 6, 2019 by and between the Buyer and Insys Therapeutics, Inc. (the “**Seller**”) (the “**Asset Purchase Agreement**”), a copy of which is attached hereto as **Exhibit A**, whereby the Seller has agreed, subject to Court approval, among other things, to sell the Purchased Assets to the Buyer, including, without limitation, the Assumed Contracts (as defined herein) that will be assumed and assigned to Buyer on the terms and conditions set forth in the Asset Purchase Agreement, and (iv) the Bidding Procedures Order and the record of the hearing before the Court on July 2, 2019 at which the Bidding Procedures Order was approved; and it appearing that due and sufficient notice of the Motion, the Asset Purchase Agreement, the Bidding Procedures Order, and the form of this order (the “**Sale Order**”) have been provided in accordance with the Bidding Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice is required or necessary; and, except as otherwise provided for herein, all objections to the Sale Transaction having been withdrawn, resolved, or overruled as provided in this Sale Order; and, after due deliberation and for the reasons set forth on the record of the Sale Hearing, it appearing that the relief granted herein is in the best interests of the Debtors, their estates and creditors and all parties in interest in these Chapter 11 Cases; and good and sufficient cause appearing therefor;

**IT HEREBY IS FOUND AND DETERMINED THAT:**<sup>3</sup>

A. **Fed. R. Bankr. P. 7052**. 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 any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent

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<sup>3</sup> All findings of fact and conclusions of law announced by the Court at the Sale Hearing are hereby incorporated herein to the extent not inconsistent herewith.

any of the following conclusions of law constitute findings of fact, they are adopted as such. The Court's findings shall also include any oral findings of fact and conclusions of law made by the Court during or at the conclusion of the Sale Hearing. This Sale Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

B. **Jurisdiction and Venue.** This Court has jurisdiction over the Motion, the Sale Transaction, and over the property of the Debtors and their respective bankruptcy estates, including the Purchased Assets, pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b), and the *Amended Standing Order Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and other legal predicates for the relief sought in the Motion and granted herein are sections 105, 362, 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9008, 9014 and 9019, and Local Rules 2002-1, 6004-1, and 9006-1.

C. **Final Order.** This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Sale Transaction as contemplated by the Asset Purchase Agreement. In the absence of a stay pending appeal, Buyer, being a good faith purchaser under section 363(m) of the Bankruptcy Code, may close the sale contemplated by the Asset Purchase Agreement at any time after entry of this Sale Order, subject to the provisions of the Asset Purchase Agreement, and shall not be subject to any applicable stay, including any stay provided by Bankruptcy Rules 6004(h) and 6006(d).

D. **Notice and Opportunity to Object.** As evidenced by the affidavits of service on file with the Court, due, proper, timely, adequate, and sufficient notice and a reasonable opportunity to object or be heard with respect to the Motion, the Sale Hearing, the Sale Transaction, the Asset Purchase Agreement, and the assumption and assignment of the Assumed Contracts has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Bidding Procedures Order, to all known interested parties, including to (a) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a transaction with respect to the Purchased Assets during the past twelve (12) months; (b) all persons and entities known by the Debtors to have asserted any lien, claim, interest or encumbrance on the Purchased Assets; (c) all non-debtor parties to the Assumed Contracts; (d) the U.S. Trustee; (e) the official committee of unsecured creditors (the “**Committee**”); (f) any governmental authority known to have a claim in the Chapter 11 Cases; (g) all applicable federal, state, and local taxing and regulatory authorities, including the Internal Revenue Service; (h) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (i) the Federal Trade Commission; (j) the Antitrust Division of the United States Department of Justice; (k) the United States Attorney General; (l) the Office of the Attorney General and Office of the Secretary of State in each state in which the Debtors operate; (m) the United States Attorney for the District of Delaware; (n) all other known creditors of the Debtors; (o) all of the persons and entities entitled to notice pursuant to Rule 2002 of the Bankruptcy Rules; and (p) all other persons as directed by the Court. In addition, the Debtors caused the Sale Notice (as defined in the Bidding Procedures Order) to be published in *The New York Times* and *The Arizona Republic* on July 10, 2019. Accordingly, except as otherwise set forth herein, no other or further notice of the foregoing or this Sale Order is

necessary or required. The disclosures made by the Debtors concerning the Motion, the Sale Hearing, the Sale Transaction, the Asset Purchase Agreement, and the assumption and assignment of the Assumed Contracts were complete and adequate.

E. **Marketing Process.** (i) The Debtors and their advisors engaged in a robust and extensive marketing and sale process through the prepetition sale process and the postpetition sale process pursuant to the Bidding Procedures Order and the Bidding Procedures; (ii) the Debtors and their advisors conducted a fair and open sale process; (iii) the sale process and the Bidding Procedures were non-collusive and duly noticed and provided a full, fair and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets; and (iv) the process conducted by the Debtors pursuant to the Bidding Procedures Order and the Bidding Procedures obtained the highest or otherwise best value for the Purchased Assets for the Debtors, their estates and their creditors, and any other transaction would not have yielded as favorable an economic result..

F. **Corporate Authority.** The Debtors (i) have full corporate power and authority to execute and deliver the Asset Purchase Agreement and all other documents contemplated thereby, (ii) have all necessary power and authority to consummate the Sale Transaction, and (iii) have taken all necessary action to authorize and approve the Asset Purchase Agreement and to consummate the Sale Transaction. No consents or approvals, other than those expressly provided for in the Asset Purchase Agreement, are required for the Debtors to consummate the Sale Transaction.

G. **Business Justification.** The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for approval of and entry into the Asset Purchase

Agreement and the other agreements, documents, and instruments deliverable thereunder, pursuant to section 363(b) of the Bankruptcy Code.

H. **Highest and Otherwise Best Offer.** The consideration to be provided by the Buyer pursuant to the Asset Purchase Agreement: (i) is fair and reasonable; (ii) is the highest and otherwise best offer for the Purchased Assets; (iii) will provide a greater recovery to the Debtors' creditors than would be provided by any other available alternative; (iv) will maximize the value of the Debtors' estates; and (v) constitutes reasonably equivalent value and fair consideration for the Purchased Assets. No other person, entity, or group of entities has offered to purchase the Purchased Assets for greater economic value to the Debtors than the Buyer has. The Debtors' determination that the Asset Purchase Agreement constitutes the highest and best offer for the Purchased Assets was a valid, sound, and reasonable exercise of the Debtors' business judgment consistent with their fiduciary duties. The terms and conditions set forth in the Asset Purchase Agreement are fair and reasonable under the circumstances. The Asset Purchase Agreement was not entered into by the Buyer or the Debtors for the purpose of, nor does it have the effect of, hindering, delaying, or defrauding any creditor of the Debtors under any of the foregoing federal or state laws or any other applicable laws.

I. **Good Faith Purchaser.** The Asset Purchase Agreement and the Sale Transaction were proposed, negotiated, and entered into by and among the Debtors and the Buyer without collusion or fraud, in good faith, and at arm's length. The Buyer is a good faith purchaser within the meaning of Bankruptcy Code section 363(m) and otherwise has proceeded in good faith in all respects in connection with this proceeding, and is therefore entitled to the full protection of that provision with respect to the Asset Purchase Agreement, the Sale Transaction, each term of the Asset Purchase Agreement (and any ancillary documents executed in

connection therewith) and each term of this Sale Order. The protections afforded by Bankruptcy Code section 363(m) are integral to the Sale Transaction and the Buyer would not consummate the Sale Transaction without such protections. There has been no showing that the Debtors or the Buyer have engaged in any action or inaction that would cause or permit the Asset Purchase Agreement or the Sale Transaction to be avoided or any costs or damages to be imposed under Bankruptcy Code section 363(n). Neither, the Buyer, nor any of its affiliates, members, partners, officers, directors, principals, or shareholders is an “insider” of the Debtors as that term is defined in Bankruptcy Code section 101(31). No common identity of directors, managers, controlling shareholders, or members exists between the Debtor and the Buyer.

J. **Validity of the Transfer.** As of the Closing, the transfer of Purchased Assets to the Buyer will be a legal, valid, and effective transfer of such Purchased Assets, and will vest Buyer with all right, title, and interest of the Debtors in and to the Purchased Assets, free and clear of all liens, claims, encumbrances, and other interests. The consummation of the Sale Transaction is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, sections 105(a), 363(b), 363(f), 363(h), 365(f), and 365(m), and all of the applicable requirements of such sections have been complied with in respect of the Sale Transaction.

K. **Legal, Valid, and Binding Transfer.** The Asset Purchase Agreement is a valid and binding contract between the Debtors and the Buyer and shall be enforceable pursuant to its terms. The Asset Purchase Agreement, the Sale Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and any chapter 7 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.

L. **Free and Clear.** The Buyer would not have entered into the Asset Purchase Agreement and would not consummate the Sale Transaction if the transfer 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 liens, claims, encumbrances and other interests, as provided for herein, or if the Buyer would, or in the future could, be liable for any such claims. Subject to the provisions of this Sale Order and except as may be specifically provided in the Asset Purchase Agreement or this Sale Order, the Debtors may sell the Purchased Assets free and clear of any and all interests, including all liens, claims, and encumbrances, because, in each case, one or more of the standards set forth in sections 363(f)(1) through (5) of the Bankruptcy Code have been satisfied. Each entity with an interest, including any lien, claim, or encumbrance, in the Purchased Assets to be transferred on the Closing Date: (i) has, subject to the terms and conditions of this Sale Order, consented to the Sale Transaction or is deemed to have consented; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such lien, claim, interest, or encumbrance; or (iii) otherwise falls within the provisions of Bankruptcy Code section 363(f). Those holders of liens, claims, encumbrances and other interests that did not object to the Motion are deemed to have consented to the Sale Transaction and the relief provided for herein pursuant to Bankruptcy Code section 363(f)(2). Except to the extent expressly set forth in the Asset Purchase Agreement, this Sale Order is and shall be effective on the Closing Date as a determination that all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing Date have been unconditionally released, discharged, and terminated, in each case to the fullest extent permitted by law, and that the conveyances described herein have been effected; provided that such liens, claims, encumbrances, and other interests shall attach to the proceeds of the Sale



Transaction in the order of their priority, with the same validity, force, and effect which they now have against the Purchased Assets. Except to the extent expressly set forth in the Asset Purchase Agreement, the Buyer shall not be responsible for any liens, claims, encumbrances, and other interests, including any derivative, successor, transferee or vicarious liability as a result of the transactions authorized herein, including liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of Debtors' businesses prior to the Closing or by reason of the transactions contemplated by this Sale Order. Upon the Closing Date, all persons having liens of any kind or nature whatsoever against the Debtors or against the Purchased Assets arising prior to the Closing Date shall be forever barred, estopped, and permanently enjoined from pursuing or asserting such liens against the Buyer or any of their respective assets, property, affiliates, successors, assigns, or the Purchased Assets.

M. **Not a Sub Rosa Plan.** The Asset Purchase Agreement and Sale Transaction do not constitute an impermissible *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Asset Purchase Agreement and the Sale Transaction neither impermissibly restructure the rights of the Debtors' creditors nor impermissibly dictate a liquidating plan for the Debtors.

N. **No Successor, Derivative or Similar Liability.** The Buyer (i) is not, and shall not be, considered a successor in interest to the Debtors, (ii) has not, *de facto* or otherwise, merged or consolidated with or into the Debtors, (iii) is not a continuation or substantial continuation of the Debtors or any enterprise of the Debtors, and (iv) is not holding itself out to the public as a continuation of the Debtors. There is no continuity or common identity between the Buyer, any of its affiliates and any of the Debtors. The sale and transfer of the Purchased Assets to the Buyer, including the assumption by the Debtors and assignment, transfer and/or

sale to the Buyer and the Buyer's occupation and use of the Purchased Assets will not subject the Buyer to any liability (including any successor liability) with respect to the operation of any of the Debtors' businesses before Closing (as defined in the Asset Purchase Agreement) or by reason of such transfer, except that, upon the Closing, the Buyer shall become liable for the applicable Assumed Liabilities. Buyer shall have no obligations with respect to any liabilities of the Debtors or the Debtors' estates arising out of or related to the Purchased Assets, except as expressly provided in the Asset Purchase Agreement. The Sale Transaction contemplated under the Asset Purchase Agreement does not amount to a consolidation, merger or de facto merger of the Buyer and the Debtors and/or the Debtors' estates. The Buyer would not have acquired the Purchased Assets if it were liable for claims based upon "successor liability" theories.

O. **Personally Identifiable Information.** For purposes of Section 363(b)(1) of the Bankruptcy Code, if the Debtors seek to transfer any personally identifiable information about individuals through or in connection with the Sale Transactions, the Debtors will promptly alert the United States Trustee appointed in these Chapter 11 Cases, who will determine whether appointment of a consumer privacy ombudsman is required.

P. **Cure Costs.** As evidenced by the certificates of service filed with this Court, and in accordance with the provisions of the Bidding Procedures Order, the Debtors have served notice of the Debtors' intent to assume and assign certain Contracts and Leases and of the related proposed Cure Costs upon each non-Debtor counterparty to the Contracts and Leases (the "**Assumption and Assignment Notice**"). The service of the Assumption and Assignment Notice was timely, good, sufficient, and appropriate under the circumstances and no other or further notice need be given with respect to the Cure Costs for the assumption and assignment of the Contracts and Leases. All non-debtor parties to the Contracts and Leases have had a reasonable

opportunity to object both to the Cure Costs listed on the Assumption and Assignment Notice and to the assumption and assignment of the Assumed Contracts to the Buyer, as noticed to non-Debtor parties to Contracts and Leases with the Notice of Designation, listing the Proposed Assumed Contracts designated for assumption and assignment by the Buyer (the “**Assumed Contracts**”).

Q. **Assumption and Assignment of Assumed Contracts.** The assumption and assignment of each of the Assumed Contracts is an integral element of the Asset Purchase Agreement, is in the best interests of the Debtors and their estates, and represents the reasonable exercise of the Debtors’ sound business judgment. Each Assumed Contract constitutes an executory contract, unexpired personal property lease, or unexpired non-residential real property lease under section 365 of the Bankruptcy Code. No defaults exist in the Debtors’ performance under the Assumed Contracts as of the date of this Sale Order other than the failure to pay the applicable Cure Costs, as may be required, or such defaults that are not required to be cured. In addition, the Buyer has provided adequate assurance of its ability to perform its obligations under each of the Assumed Contracts within the meaning of section 365 of the Bankruptcy Code. The assumption and assignment of the Assumed Contracts, subject to the conditions in the Asset Purchase Agreement, is integral to the Asset Purchase Agreement, is in the best interests of the Debtors, their estates and their creditors, and represents the valid and reasonable exercise of the Debtors’ sound business judgment. Specifically, the assumption and assignment of the Assumed Contracts (i) is necessary to sell the Purchased Assets to the Buyer, (ii) limits the losses suffered by counterparties to the Assumed Contracts, and (iii) maximizes value for all of the Debtors’ stakeholders by limiting the amount of claims against the Debtors’ estates that would otherwise arise from the rejection of the Assumed Contracts. The Debtors have met all applicable

requirements of section 365(b) of the Bankruptcy Code and the Bidding Procedures Order and all other requirements and conditions under the Bankruptcy Code for the assumption by the Debtors and assignment to the Buyer of the Assumed Contracts. Therefore, the Assumed Contracts may be assumed by the Debtors and assigned to the Buyer. The assumption and assignment of each Assumed Contract is approved notwithstanding any provisions in such Assumed Contract or other restrictions prohibiting its assignment or transfer.

R. **Prompt Consummation.** The Sale Transaction must be approved and consummated promptly in order to maximize value for the Debtors' estates. Time is of the essence in consummating the Sale Transaction. The Debtors have demonstrated compelling circumstances and good and sufficient cause for the immediate approval and consummation of the transactions contemplated by the Asset Purchase Agreement, including, without limitation, the Sale Transaction and the assumption and assignment of the Assumed Contracts, prior to, and outside of, a chapter 11 plan. Accordingly, there is sufficient cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regard to the transactions contemplated by this Sale Order.

S. **Legal and Factual Bases.** The legal and factual bases set forth in the Motion and herein establish just cause for the relief granted herein.

T. **Necessity of Sale Order.** The Buyer would not consummate the transactions without all of the relief provided for in this Sale Order.

**THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Any objections, responses or reservations of rights filed or asserted in response to the Motion and the relief granted herein, to the extent not resolved as set forth herein, settled, or

waived as announced to the Court on the record at the Sale Hearing, are hereby overruled on the merits in their entirety.

**Approval of the Asset Purchase Agreement**

3. The Asset Purchase Agreement with the Buyer, including all of its terms and conditions, all schedules and exhibits, all ancillary documents, and all transactions contemplated therein, including, without limitation, the Sale Transaction, and the assumption and assignment of the Assumed Contracts, are hereby approved in all respects.

4. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtors and their respective officers, employees and agents are authorized and empowered to (i) execute, deliver, perform under, consummate, and implement the Asset Purchase Agreement and the Sale Transaction together with all additional documents as may be reasonably necessary or desirable to implement the Asset Purchase Agreement and the Sale Transaction, (ii) take any and all actions as they deem necessary, appropriate, or advisable for the purpose of assigning, transferring, granting, conveying, and conferring to the Buyer or reducing to possession the Purchased Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Asset Purchase Agreement and the Sale Transaction, including, without limitation, any and all actions reasonably requested by the Buyer which are consistent with the Asset Purchase Agreement and the Sale Transaction, and (iii) pay, without further order of this Court, whether before, at or after the Closing Date, any expenses or costs that are required or reasonably contemplated to be paid by the Debtors in order to consummate the transactions contemplated by the Asset Purchase Agreement or perform their obligations under the Asset Purchase Agreement.

**Transfer of the Purchased Assets Free and Clear**

5. Pursuant to sections 105(a), 363(f), and 365(b) of the Bankruptcy Code, upon the Closing of the Sale Transaction: (i) the transfer of the Purchased Assets to the Buyer pursuant to the Asset Purchase Agreement shall constitute a legal, valid, and effective transfer of the Purchased Assets and shall vest the Buyer with all right, title, and interest in and to the Purchased Assets; and (ii) the Purchased Assets shall be transferred to the Buyer free and clear of any and all interests, including all liens, claims, and encumbrances, except those specifically assumed by the Buyer pursuant to the Asset Purchase Agreement, with any such liens, claims, encumbrances and other interests of which the Purchased Assets are sold free and clear to attach to the proceeds of the Sale Transaction, in the order of their priority, with the same validity, force, and effect which they had against the Purchased Assets prior to the entry of this Sale Order, subject to any rights, claims, and defenses the Debtors, their estates, and all interested parties may possess with respect thereto; and all persons are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, against the Buyer or the Purchased Assets with respect to any such liens, claims, encumbrances, and other interests. Accordingly, Buyer shall not have any derivative, successor, transferee or vicarious liability as a result of the transactions authorized herein, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' businesses prior to the Closing or by reason of the transactions contemplated by this Sale Order.

6. Notwithstanding anything herein or in the Asset Purchase Agreement to the contrary, in no instance shall the Buyer or its designee have any liability for, or be deemed to have assumed, any Excluded Liability.

7. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a legal, valid, binding, and effective, full and complete general assignment, conveyance, and transfer of the Debtors' interests in the Purchased Assets or a bill of sale transferring good and marketable title in and to the Purchased Assets.

8. This Sale Order is and shall be effective as a determination that all liens, claims, encumbrances and other interests (other than those expressly assumed by the Buyer or permitted to survive under the Asset Purchase Agreement), attributable to any period ending on or before the Closing Date, shall be and are, without further action by any person or entity, unconditionally released, discharged, and terminated with respect to the Purchased Assets as of the Closing Date, except as may otherwise be set forth in the Asset Purchase Agreement or this Sale Order. The provisions of this Sale Order authorizing the sale and assignment of the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests shall be self-executing, and notwithstanding the failure of the Debtors, the Buyer, or any other party to execute, file, or obtain releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and/or implement the provisions hereof, all liens, claims, encumbrances, and other interests (other than those expressly assumed by the Buyer or permitted to survive under the Asset Purchase Agreement) on or against the Purchased Assets, if any, shall be deemed released, discharged, and terminated.

9. All persons (and their respective successors and assigns) including all debt security holders, equity security holders, governmental tax and regulatory authorities, lenders, customers, vendors, employees, former employees, litigation claimants, trade creditors, and any other creditors or parties-in-interest who may or do hold claims against the Debtors, the Purchased Assets, and/or the Debtors' business, are hereby forever barred, estopped, and

permanently enjoined from asserting or pursuing such claims against the Buyer, its affiliates, successors, assigns, its property or the Purchased Assets, including taking any of the following actions with respect to any such claims: (i) commencing or continuing in any manner any action, whether at law or in equity, in any judicial, administrative, arbitral, or any other proceeding, against the Buyer, its affiliates, successors, assigns, assets (including the Purchased Assets), or properties; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Buyer, its affiliates, successors, assigns, assets (including the Purchased Assets), or properties; (iii) creating, perfecting, or enforcing any claim against the Buyer, its affiliates, successors, assigns, assets (including the Purchased Assets), or properties; (iv) asserting a claim as a setoff, recoupment, or right of subrogation against any obligation due to the Buyer, its affiliates, or its successors or assigns; or (v) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Sale Order or the agreements or actions contemplated or taken in respect thereof. Following the Closing, no holder of any lien, claim, encumbrance or other interest shall interfere with the Buyer's title to or use and enjoyment of the Purchased Assets based on or related to any such lien, claim, encumbrance or other interest or based on any action the Debtors may take in the Chapter 11 Cases.

10. Except as otherwise provided herein or in the Asset Purchase Agreement, on the Closing Date, the Debtors and the Debtors' creditors are authorized to execute such documents and instruments and to take all other actions as may be reasonably necessary to document and effectuate the release of their liens, claims, encumbrances, and other interests in the Purchased Assets (other than those expressly assumed by the Buyer or permitted to survive under the Asset Purchase Agreement), if any, as such liens, claims, encumbrances, and other interests, may have



been recorded or may otherwise exist. If any such creditor fails to execute any such documents or instruments or take any such actions, the Buyer is authorized to execute such documents and instruments and to take such actions on behalf of the creditor so as to document the release of such liens, claims, encumbrances, and other interests.

11. To the maximum extent permitted under applicable law, the Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors (to the extent of the Debtors' right, title and interest therein) 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, directed to be transferred to the Buyer with respect to the Purchased Assets as of the Closing Date.

12. No governmental unit (as defined in Bankruptcy Code section 101(27)) or any representative thereof may deny, revoke, suspend or refuse to renew any right, license, copyright, patent, trademark, or other permission 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 Sale Transaction to the extent that any such action by a governmental unit or any representative thereof would violate Bankruptcy Code section 525.

**No Successor, Derivative, or Similar Liability**

13. The Buyer and its successors and assigns shall not be deemed, as a result of any action taken in connection with the transfer of the Purchased Assets, to (i) be a successor (including a successor employer) to the Debtors or their estates, (ii) have, *de facto* or otherwise, merged or consolidated with or into the Debtors or their estates, or (iii) be an alter ego or mere continuation or substantial continuation of the Debtors or any enterprise of the Debtors, and the

Buyer shall have no liability, whether successor, transferee, derivative, vicarious, or assignee liability of any kind or character, including, but not limited to, under any theory of foreign, federal, state, or local antitrust, environmental, successor, tax, ERISA, assignee, or transferee liability, labor, product liability, employment, de facto merger, substantial continuity, or other law, rule, or regulation, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the sale or marketing of product or material produced in operation of the Purchased Assets or the operation of the Purchased Assets prior to the Closing Date or any other obligations or liabilities of the Debtors arising prior to the Closing Date. Except as otherwise provided herein or in the Asset Purchase Agreement, the transfer of the Purchased Assets to the Buyer pursuant to the Asset Purchase Agreement shall not result in the Buyer or the Purchased Assets having any liability or responsibility for, or being required to satisfy in any manner, whether in law or in equity, whether by payment, setoff, or otherwise, directly or indirectly, any claim against the Debtors or against any insider of the Debtors or any liens, claims, encumbrances, or other interests, including any derivative, successor, transferee, or vicarious liability as a result of the transactions authorized herein, including liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of Debtors' businesses prior to the Closing, the Purchased Assets, or by reason of the transactions contemplated by this Sale Order.

14. Without limiting the generality of the foregoing, except as otherwise expressly provided in the Asset Purchase Agreement with respect to Assumed Liabilities, the Buyer shall not be liable for any claims against, and liabilities of, the Debtors or any of the Debtors'

predecessors, insiders, affiliates, or their respective current and former directors, officers, employees, or agents or otherwise be required to satisfy in any manner any claims relating to the operation of the Debtors' businesses prior to the Closing, the Purchased Assets, or by reason of the transactions authorized hereunder. Except as provided in the Asset Purchase Agreement, the consideration given by the Buyer shall constitute valid and valuable consideration for the release of any potential claims of successor, derivative, or similar liability against the Buyer, which release shall be deemed to have been given in favor of the Buyer by all holders of liens, claims, encumbrances, and other interests against the Debtors or the Purchased Assets.

**Good Faith; Arm's-Length Sale**

15. The consideration provided by the Buyer under the Asset Purchase Agreement constitutes reasonably equivalent value, fair consideration and fair value for the Purchased Assets under the Asset Purchase Agreement and may not be avoided under section 363(n) of the Bankruptcy Code. None of the Debtors or the Buyer has engaged in any conduct that would cause or permit the Asset Purchase Agreement or the Sale Transaction to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

16. The Asset Purchase Agreement and the Sale Transaction are undertaken by the Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Asset Purchase Agreement and the Sale Transaction shall not affect the validity of the sale of the Purchased Assets to the Buyer, unless this Sale Order is duly stayed pending such appeal. The Buyer is a good faith Buyer of the Purchased Assets and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code.

**Assumption and Assignment Procedures**

17. Pursuant to sections 105(a), 363, and 365, of the Bankruptcy Code, the Debtors are authorized to assume the Assumed Contracts designated for assumption and assignment in accordance with the Asset Purchase Agreement, make or cause the Buyer to pay the Cure Costs for the Assumed Contracts (or such other Cure Costs as agreed, in writing, by the Buyer and the counterparty to the applicable Assumed Contract or ordered by this Court), and assign the Assumed Contracts to the Buyer, free and clear of all claims, liens, encumbrances, and other interests of any kind or nature whatsoever, without the need for any further documentation. Upon the Closing Date, the Buyer shall be fully and irrevocably vested with all right, title, and interest of the Debtors in, to, and under the Assumed Contracts. Subject to and conditioned upon the closing of the Sale Transaction, and subject to the designation rights and procedures contained in this Sale Order, the Bidding Procedures Order, and the Asset Purchase Agreement, the Buyer shall pay the undisputed portion of the Cure Costs for the Assumed Contracts (or such other Cure Costs as agreed, in writing, by the Debtors, the Buyer and the counterparty to the applicable Assumed Contract or ordered by this Court) within three (3) business days of the Closing.

18. The Buyer has provided adequate assurance of future performance under the Assumed Contracts within the meaning of section 365 of the Bankruptcy Code.

19. The Assumed Contracts, consistent with the provisions contained herein, shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in section 365(b)(2) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy

Code, following payment of the Cure Costs for the Assumed Contracts (or such other Cure Costs as agreed, in writing, by the Debtors, the Buyer and the counterparty to the applicable Assumed Contract or ordered by this Court), the Debtors shall be relieved from any further liability with respect to the Assumed Contracts after such assignment to the Buyer. No sections or provisions of any Assumed Contract that purport to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-debtor counterparty to the Assumed Contracts shall have any force or effect with respect to the Sale Transaction and assignments authorized by this Sale Order. Such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and are otherwise unenforceable under section 365(e) of the Bankruptcy Code. There shall be no accelerations, assignment fees, increases, or any other fees charged to the Buyer or the Debtors as a result of the assumption or assignment of Assumed Contracts, the Sale Transaction, or the commencement of these Chapter 11 Cases. No Assumed Contract may be terminated, or the rights of any party modified in any respect, including pursuant to any “change of control” clause, by any other party thereto, as a result of the transactions contemplated by the Asset Purchase Agreement.

20. All defaults or other obligations of the Debtors under the Assumed Contracts arising or accruing prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured, upon payment of the Cure Costs for the Assumed Contracts (or such other Cure Costs as agreed, in writing, by the Debtors, the Buyer and the counterparty to the applicable Assumed Contract or ordered by this Court), and in no event shall the Buyer or the Debtors have any liability whatsoever under any Assumed Contract arising from or related to the time period prior to the Closing Date. The non-debtor counterparties to the Assumed Contracts are forever

barred and permanently enjoined from asserting against the Debtors, their estates, the Buyer, and their respective successors and assigns, any default or unpaid obligation allegedly arising or occurring before the Closing, any pecuniary loss resulting from such default, or any other claim or obligation under the Assumed Contracts arising or incurred prior to the Closing, other than the Cure Costs for the Assumed Contracts (or such other Cure Costs as agreed, in writing, by the Debtors, the Buyer and the counterparty to the applicable Assumed Contract or ordered by this Court). The Cure Costs shall not be subject to further dispute or audit, including, without limitation, any based on performance prior to the Closing Date, irrespective of whether such Assumed Contract contains an audit clause. After the payment of the applicable Cure Costs, none of the Debtors or the Buyer shall have any further liabilities to the counterparties to the Assumed Contracts other than the Buyer's obligations under the Assumed Contracts that accrue and become due and payable on or after the Closing Date.

21. In the event of a dispute as of, or after, the Closing Date regarding assumption and assignment or cure of any Assumed Contract, any applicable cure payments with respect to such Assumed Contract shall be made following the entry of an order resolving any such dispute (or upon the consensual resolution of such dispute as may be agreed by the Debtors, the Buyer, and such non-Debtor counterparty).

22. The failure of the Debtors or the Buyer to enforce, at any time, one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions or of the right of the Debtors or the Buyer, as the case may be, to enforce every term and condition of the Assumed Contracts. The validity of the assumption and assignment of the Assumed Contracts to the Buyer shall not be affected by any existing dispute between any of the Debtors and any non-debtor counterparty to such Assumed Contract. Any party that may have had the right to consent

to the assignment of any Assumed Contract is deemed to have consented for the purposes of section 365 of the Bankruptcy Code and otherwise if such party failed to file a timely objection to the assumption and assignment of such Assumed Contract.

23. To the extent a non-debtor counterparty to an Assumed Contract failed to timely object to Cure Costs, (i) such Cure Costs shall be deemed to be finally determined and any such counterparty shall be prohibited from challenging, objecting to, or denying the validity and finality of the Cure Costs at any time, and (ii) such counterparty shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code, 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 non-debtor party's written consent to the assumption or assignment thereof.

#### **Ipsso Facto Clauses Ineffective**

24. Except as otherwise specifically provided for by order of this Court, the Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, including all rights of the Buyer as the assignee of the Assumed Contracts, notwithstanding any provision in any such Assumed Contracts (including, without limitation, those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer. There shall be no, and all non-Debtor parties to any Assumed Contract are forever barred and permanently enjoined from raising or asserting against the Debtors or the Buyer any defaults, breaches, claims, pecuniary losses, rent accelerations, escalations, assignment fees, increases, or any other fees charged to the Buyer or the Debtors as a result of the assumption or assignment of the Assumed Contracts.

25. Except as otherwise specifically provided for by order of this Court, upon the Debtors' assignment of the Assumed Contracts to the Buyer, no default shall exist under any Assumed Contracts, and no counterparty to any Assumed Contracts shall be permitted to declare a default by any Debtor or the Buyer, or otherwise take action against the Buyer, as a result of any Debtor's financial condition, bankruptcy, or failure to perform any of its obligations under the relevant Assumed Contracts. Any provision in an Assumed Contract that prohibits or conditions the assignment or sublease of such Assumed Contract in accordance with the Asset Purchase Agreement (including without limitation, the granting of a lien therein) or allows the counterparty thereto to terminate, recapture, set off, recoup, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force and effect, but only in connection with the assignment or sublease of such Assumed Contract in connection with the sale to the Buyer approved by this Sale Order. The failure of the Debtors or the Buyer to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Debtors' and the Buyer's rights to enforce every term and condition of the Assumed Contract.

#### **Related Relief**

26. All persons that are in possession of some or all of the Purchased Assets as of or after the Closing are hereby directed to surrender possession of such Purchased Assets to the Buyer as of the Closing or at such time thereafter as the Buyer may request. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Buyer. The Debtors agree to exercise commercially reasonable efforts to assist the Buyer in assuring that all persons that are



presently, or on the Closing Date may be, in possession of some or all of the Purchased Assets in which the Debtors hold an interest will surrender possession of the Purchased Assets either to (i) the Debtors before the Closing Date, or (ii) the Buyer on or after the Closing Date.

27. This Sale Order is and shall be binding upon and shall govern acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons, who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that the Buyer is the assignee and owner of the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests (other than those expressly assumed by the Buyer or permitted to survive under the Asset Purchase Agreement) (all such entities being referred to. the **“Recording Officers”**). All Recording Officers are authorized to strike recorded liens, claims, interests, and encumbrances against the Purchased Assets recorded prior to the date of this Sale Order unless the Asset Purchase Agreement expressly provides that the Buyer is acquiring the Purchased Assets subject to such liens, claims, encumbrances, and other interests. A certified copy of this Sale Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel any liens and other encumbrances of record, and this Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state or local government agency, department or office. If any person or entity which has filed statements or other documents or agreements evidencing liens on, or other interests in, all or any portion of the Purchased Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination

statements, instruments of satisfaction, releases of liens, and any other documents necessary for the purpose of documenting the release of all liens, claims, encumbrances, or other interests which the person or entity has or may assert with respect to all or any portion of the Purchased Assets, the Debtors are hereby authorized, and the Buyer is hereby authorized, on behalf of the Debtors and each of the Debtors' creditors, to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to the Purchased Assets, or take such other appropriate action, including seeking relief in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction and releases of all such liens, claims, encumbrances, or other interests with respect to the Purchased Assets.

28. Each and every filing agent, filing officer, title agent, recording agency, governmental department, secretary of state, federal, state and local official, and any other person and entity who may be required by operation of law, the duties of its office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Purchased Assets, is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale Transaction contemplated by the Asset Purchase Agreement and approved by this Sale Order.

29. Following the Closing, no holder of any liens, claims, encumbrances, or other interests with respect to the Purchased Assets (other than those expressly assumed by the Buyer or permitted to survive under the Asset Purchase Agreement) or other party in interest may interfere with the Buyer's use and enjoyment of the Purchased Assets based on or related to such liens, claims, encumbrances, or other interests, or any actions that the Debtors may take in their

Chapter 11 Cases, and no party may take any action to prevent, interfere with, or otherwise enjoin consummation of the Sale Transaction.

30. No “bulk sales,” “bulk transfer” or similar laws (including those relating to taxes) of any state or other jurisdiction shall apply in any way to the transactions authorized herein, including the Asset Purchase Agreement and the Sale Transaction.

31. The Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Asset Purchase Agreement or any other related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence.

32. This Sale Order shall be binding in all respects upon, and the terms and provisions of the Asset Purchase Agreement and this Sale Order shall inure to the benefit of the Debtors, their estates, all creditors, all holders of equity interests in the Debtors, the official committee of unsecured creditors, any holders of liens, claims, encumbrances, or other interests against or on all or any portion of the Purchased Assets, all counterparties to any executory contract or unexpired lease of the Debtors, the Buyer and its affiliates, successors, and assigns, and any subsequently appointed estate representative or other fiduciary in the Chapter 11 Cases. The Asset Purchase Agreement, the Sale Transaction and this Sale Order shall be enforceable against and binding upon, and shall not be subject to rejection or avoidance by, any chapter 7 or chapter 11 trustee appointed in the Chapter 11 Cases. Further, nothing contained in any plan of reorganization (or liquidation) confirmed in these Chapter 11 Cases or any order confirming any plan of reorganization (or liquidation) or any other order entered in these Chapter 11 Cases shall

conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Sale Order.

33. The Asset Purchase Agreement and any related agreements, documents, or other instruments contemplated thereby may be waived, modified, amended, or supplemented by the Debtors and the Buyer in a writing signed by such parties without further order of the Court; provided that any such waiver, modification, amendment, or supplement does not have a material adverse effect on the Debtors or the Debtors' estates.

34. The failure to include specifically any particular provision of the Asset Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety.

35. To the extent of any inconsistency between the provisions of this Sale Order, the Asset Purchase Agreement, and any documents executed in connection therewith, the provisions contained in the Sale Order, the Asset Purchase Agreement, and any documents executed in connection therewith shall govern, in that order.

36. Notwithstanding the provisions of Bankruptcy Rule 6004(h) and 6006(d) or any other applicable provision of the Bankruptcy Code or the Bankruptcy Rules that may stay the effectiveness of this Sale Order, this Sale Order shall be effective and enforceable immediately and shall not be stayed.

37. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Sale Order.

38. Without further approval of this Court, the Debtors and Buyer are authorized to execute and deliver, and perform under, one or more amendments, waivers, consents or other

modifications to and under the Asset Purchase Agreement and ancillary documents, in each case, in such form as the Debtors and Buyer may agree; provided that such amendment, waiver, consent, or modification does not materially modify, in a manner adverse to the Debtors, the terms of the Asset Purchase Agreement.

39. This Court shall retain exclusive jurisdiction and power to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order, the Sale Transaction, and the Asset Purchase Agreement, all amendments thereto and any waivers and consents thereunder, and each of the agreements executed in connection therewith and the transactions contemplated thereby.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

Asset Purchase Agreement

**STRICTLY CONFIDENTIAL**

**ASSET PURCHASE AGREEMENT**  
**BETWEEN**  
**CHILION GROUP HOLDINGS US, INC.**  
**AND**  
**INSYS THERAPEUTICS, INC.**

**DATED AS OF**  
**AUGUST 6, 2019**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of August 6, 2019, is made by and between Chilion Group Holdings US, Inc., a Delaware corporation or its Affiliate (“Buyer”), and Insys Therapeutics, Inc., a Delaware corporation (“Seller”). Buyer and Seller are each referred to individually as a “Party” or “party” and together as the “Parties” or “parties”.

WHEREAS, Seller and its Affiliates are debtors and debtors-in-possession under title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), and have filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on June 10, 2019 in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court” and such cases, the “Chapter 11 Cases,” and Seller and its Affiliates who filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, collectively, the “Debtors”), jointly administered for procedural purposes only under Case No. 19-11292;

WHEREAS, Seller owns and is engaged in the business of developing, manufacturing and marketing the (i) INSYS CBD formulations across current pre-clinical, clinical, third-party grants and investigator initiated study activities (including any future activities or indications), (ii) THC programs of Syndros oral dronabinol solution (the “Syndros Product(s)”), and (iii) Buprenorphine products (each of which at all concentrations, strengths, dosages and formulations, and each comprising, a “Product” and collectively, comprising the “Products”) in the United States;

WHEREAS, Buyer and its Affiliates are engaged in the business of research and development of pharmaceuticals and the cultivation, extraction, purification, concentration, and sale of cannabinoids and any biologically active, chemical constituents derived therefrom;

WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to acquire and assume from Seller, pursuant to Section 363(b) of the Bankruptcy Code, the Product Technology (as hereinafter defined) and certain other assets and liabilities primarily related to the Products in the Territory, all as more specifically provided and upon the terms and subject to the conditions set forth herein;

WHEREAS, the Board of Directors of Seller (the “Seller Board”) has: (a) determined that this Agreement and the transactions contemplated by this Agreement and the Ancillary Agreements (the “Transactions”) are fair to and in the best interests of Seller and its relevant stakeholders; and (b) declared it advisable to enter into this Agreement and approved the execution, delivery, and performance of this Agreement and the Ancillary Agreements; and

WHEREAS, the Board of Directors of Buyer (the “Buyer Board”) has: (a) determined that this Agreement and the Transactions are fair to and in the best interests of Buyer and its equityholders; and (b) declared it advisable to enter into this Agreement and approved the execution, delivery, and performance of this Agreement and the Ancillary Agreements.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.1 Definitions.** As used in this Agreement, the following terms have the meanings set forth below:

“Affiliate” means, with respect to any Person, any other Person that, at the time such determination is being made, controls, is controlled by or is under common control with such Person (and for this purpose, the term “control” means the power to direct, or cause the direction of, the management or policies of a Person (directly or indirectly), whether through ownership of voting rights or securities, by Contract or otherwise (and the terms “controlling” and “controlled” have meanings correlative to the foregoing)). For purposes of this Agreement, an “Affiliate” of Seller shall mean its subsidiaries.

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

“Ancillary Agreements” means the Assignment and Assumption Agreement, the Bill of Sale, the Escrow Agreement, the Patent Assignments, the Trademark Assignments and any other documents, instruments, exhibits, annexes, schedules or certificates contemplated hereby.

“Antitrust Laws” has the meaning set forth in Section 8.1(b).

“Assignment and Assumption Agreement” means an assignment and assumption agreement to be executed and delivered by Buyer and Seller at Closing, substantially in the form attached hereto as Exhibit A.

“Assigned Intellectual Property” has the meaning set forth in Section 5.8(a).

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

“Assumption and Assignment Notice” has the meaning set forth in Section 7.4(a).

“Auction” has the meaning set forth in Section 7.3.

“Back-up Termination Date” means the first to occur of: (i) sixty (60) days after the entry of the Sale Order; (ii) one hundred twenty (120) days after the completion of the Auction; (iii) consummation of a transaction with the winning bidder at the Auction; or (iv) Buyer’s receipt of notice from Seller of the release by Seller of Buyer’s obligations under Section 7.3.

“Bankruptcy and Equity Exception” has the meaning set forth in Section 5.2.

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

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

“Bidding Procedures Order” means that certain Order of the Bankruptcy Court entered on July 2, 2019 ECF No. 210, that, among other things, establishes: (i) a date by which bids must be submitted by bidders and (ii) procedures for the bidding and auction processes.

“Bill of Sale” means a bill of sale to be executed and delivered by Seller to Buyer at Closing, substantially in the form attached hereto as Exhibit B.

“Books and Records” has the meaning set forth in the definition of “Transferred Records.”

“Business Day” means any day other than a Saturday, Sunday or any other day on which commercial banks in New York, New York, U.S.A. are authorized or required by Law to remain closed.

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

“Buyer Board” has the meaning set forth in the recitals.

“Buyer Officer’s Certificate” means a certificate, dated as of the Closing Date, executed by a duly authorized officer of Buyer, reasonably satisfactory in form to Seller, as to the satisfaction of the conditions set forth in Section 11.3(a) and Section 11.3(b).

“CA Termination Date” has the meaning set forth in Section 9.4.

“Change of Control” shall mean (A) any merger, consolidation, dissolution, liquidation, tender offer, recapitalization, reorganization, share exchange, business combination, joint venture, partnership, dissolution, liquidation, spin-off, extraordinary dividend or similar transaction that results in any Person(s) or group (as defined in or under Section 13 of the Exchange Act), directly or indirectly, acquiring record or beneficial ownership of fifty percent (50%) or more of the outstanding equity or voting power of Buyer, or shares, assets or other rights representing fifty percent (50%) or more of the consolidated net revenues, net income or total assets of Buyer or (B) any acquisition with respect to any of the Products or the Transferred Assets by any Person(s) or group resulting in any Person(s) or group becoming the beneficial owner of, directly or indirectly, in one or a series of related transactions, an interest in any of the Products or the Transferred Assets representing fifty percent (50%) or more of the consolidated net revenues, net income or total assets of Buyer and its Affiliates represented by the Products and the Transferred Assets, other than, in the case of clause (A) or (B), a transaction involving only Buyer and/or one or more of its controlled Affiliates.

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

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” has the meaning set forth in Section 4.1.

“Commercialization” or “Commercialize” means any and all activities directed to the offering for sale and sale of a compound, product or therapy including activities directed to storing, marketing, promoting, detailing, distributing, importing, exporting, selling and offering to sell such compound, product or therapy. When used as a verb, “to Commercialize” and “Commercializing” means to engage in Commercialization and “Commercialized” has a corresponding meaning.”

“Commercially Reasonable Efforts” means, with respect to a Party, those efforts and resources commensurate with the efforts commonly used in the specialty pharmaceutical industry

in connection with the Development or Commercialization of pharmaceutical products that are of similar status, stage of development, life cycle and commercial potential.

“Confidential Information” has the meaning set forth in the Confidentiality Agreement (excluding Section 7 of the Confidentiality Agreement), provided that any reference to parties in the Confidentiality Agreement, including in reference to the terms “Recipient” or “Company”, shall include the Parties to this Agreement.

“Confidentiality Agreement” means that certain Confidentiality Agreement, made as of June 27, 2019, by and between Seller and Chilion Group Inc.

“Contract” means any legally binding contract, agreement, instrument, lease, license or commitment, together with any amendments, modifications and supplements thereto.

“Control” or “Controlled” means, solely with respect to any Know-How, or Show-How, or intellectual property rights (including Patent Rights), that a party owns or purports to own, or has a license to, such Know-How or Show-How or intellectual property rights, in each case with the power to grant to the other party, assign, access, grant a license or sublicense (as applicable) to the same on the terms and conditions set forth in this Agreement without knowingly violating any obligations of such granting party owed to a third party or subjecting such granting party to any additional fees or charges.

“Cure Costs” has the meaning set forth in Section 2.4.

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

“Development” or “Develop” means, with respect to a compound, product or therapy, any non-clinical and clinical drug development activities that are necessary or useful to obtain Marketing Authorization for such compound, product or therapy, including completions of clinical trials and the preparation and filing of Regulatory Filings and all regulatory affairs related to the foregoing. When used as a verb, “Developing” means to engage in Development and “Developed” has a corresponding meaning. For clarity, “Development” shall not include any Commercialization activities.

“Encumbrance” means, with respect to any asset, any imperfection of title, mortgage, charge, lien, security interest, easement, right of way, pledge, license, covenant, claim, interest or encumbrance of any nature whatsoever.

“Equipment” means the equipment set forth on Schedule 2.2(a)(ix).

“Escrow Agent” has the meaning set forth in Section 3.1.

“Escrow Agreement” means that certain Escrow Agreement by and among the Escrow Agent, Seller and Buyer, dated as of the date hereof.

“Escrowed Funds” has the meaning set forth in Section 3.1.

“Exchange Act” has the meaning set forth in Section 5.3(a).

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

“Excluded Liabilities” has the meaning set forth in Section 2.3(c).

“Exhibits” means, collectively, the Exhibits referred to throughout this Agreement.

“FDA” means the U.S. Food and Drug Administration and any successor thereto.

“FDA Transfer Letters” means, (x) with respect to Seller, a letter or letters to the FDA transferring the rights to the Product Registrations to Buyer and a letter or letters to the FDA, notifying it of the transfer of the Product Registrations to Buyer, as well as any similar letters to any other applicable Regulatory Authority, in each case delivered to Buyer for further delivery on behalf of Seller; and (y), with respect to Buyer, a letter or letters to the FDA assuming responsibility for the Product Registrations from Seller and a letter or letters to the FDA from Buyer, notifying it of the transfer of the Product Registrations from Seller to Buyer, as well as any similar letters to any other applicable Regulatory Authority, in each case, copying Seller.

“FFDCA” has the meaning set forth in Section 5.9.

“Finished Goods” means any Syndros Products packaged, labeled and ready for distribution and sale in finished form that are intended for distribution within the Territory.

“Fundamental Representations” means the representations and warranties of Seller set forth in Section 5.1 (*Seller Organization; Good Standing*), Section 5.2 (*Authority; Execution and Delivery*), Section 5.4 (*Title to Transferred Assets*) and Section 5.6 (*No Brokers*) and of Buyer set forth in Section 6.1 (*Buyer Organization; Good Standing*), Section 6.2 (*Authority; Execution and Delivery*) and Section 6.4 (*No Brokers*).

“Governmental Entity” means any supra-national, federal, foreign, national, state, county, local, municipal or other governmental or quasi-governmental, regulatory or administrative authority, agency, commission or other instrumentality, any court, tribunal or arbitral body with competent jurisdiction, or any national securities exchange or automated quotation service, including any governmental regulatory authority or agency responsible for the grant of approval, clearance, qualification, licensing or permitting of any aspect of the Research, Development, registration, manufacture, making, formulating, having made, use or Commercialization of any of the Products.

“HSR Act” has the meaning set forth in Section 5.3(a).

“IND” means an investigational new drug application filed with the FDA with respect to a Product (or other compound, product or therapy).

“Indemnified Parties” has the meaning set forth in Section 13.2.

“Indemnified Party” has the meaning set forth in Section 13.2.

“Intellectual Property” means all rights, titles and interests in or relating to intellectual property that shall include but not be limited to: (i) Patent Rights; (ii) registered, non-registered,

and intent-to-use listed trademarks, service marks and the goodwill associated therewith (“Marks”); (iii) all Internet domain names and social media accounts; (iv) all fixed works of authorship, registered and non-registered copyrights, database and design rights, mask work rights, whether or not registered or published, all registrations and recordings thereof and all applications in connection therewith, along with all reversions, extensions and renewals thereof, and software and databases related thereto; (v) trade secrets as defined under the Uniform Trade Secrets Act published by the Uniform Law Commission in 1979 and amended in 1985; (vi) Show-How; and (vii) Know-How.

“Interest Rate” means 8% annually.

“Invention” means any invention, conception, reduction-to-practice, and any improvements thereof, and/or any Know-How, Show-How, composition of matter, article of manufacture, method of manufacture, method of use or other subject matter, whether such invention, conception, reduction-to-practice, or improvements thereof are ultimately patentable or not.

“Inventory” means all inventories of active pharmaceutical ingredient, components, devices, packaging, commodities, work in progress, registration batches, and Finished Goods of each Product regardless of where said Inventory resides, including, but not limited to set forth on Schedule 2.2(a)(vi).

“Joint Written Instructions” means written instructions executed by Seller and Buyer, a form of which is attached to the Escrow Agreement as an exhibit thereto.

“Know-How” means all technical, scientific, and other information, data, inventions, discoveries, trade secrets, specifications, instructions, techniques, processes, designs, drawings, formulae, methods, practices, protocols, expertise and other information and technology applicable to any acquired Intellectual Property under this Agreement, or applicable to any formulations, compositions or products or to their manufacture, development, registration, use, marketing or sale or to methods of assaying, or evaluating, or testing them, and all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical and analytical, safety, quality control, manufacturing, preclinical and clinical data relevant to any of the foregoing. For clarity, Know-How includes any such information comprised or embodied in any applicable physical materials.

“Knowledge” of (i) Seller means all such facts, circumstances or other information, of which Marie Aucoin is actually aware and (ii) Buyer means all such facts, circumstances or other information, of which Brandon F. Kidd, the sole Director on the Buyer’s Board of Directors, or Paul Atherton, is actually aware.

“Law” means any law, judgment, order, decree, statute, ordinance, rule or regulation enacted, issued or promulgated by any Governmental Entity.

“Liability” means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or not, or determined or determinable.



“Losses” means any and all damages, losses, claims, judgments, penalties, costs and expenses (including reasonable and documented legal fees and expenses actually incurred in investigating and/or prosecuting any claim for indemnification).

“Marketing Authorization” means, collectively, all Regulatory Approvals (including any pricing, reimbursement or access approvals) from the relevant Regulatory Authority necessary to initiate marketing and selling any Product (or other compound, product or therapy) in any country.

“Marks” has the meaning set forth in the definition of “Intellectual Property.”

“Material Adverse Effect” means any event, occurrence, development, circumstance, change, effect, condition or state of facts that has had or would reasonably be expected to have a materially adverse effect on (as applicable): (i) the Transferred Assets taken as a whole; or (ii) the ability of Seller to consummate the Transactions; provided, however, that a Material Adverse Effect will not include: (A) changes in economic conditions or financial, security, currency or credit markets in general or changes affecting the availability or cost of financing; (B) changes generally applicable to the pharma or healthcare industry; (C) changes in national or international social and political conditions, including any engagement in or escalation of war, civil unrest or other hostilities; (D) acts of God, hurricane, tornado, flood, earthquake, volcanic eruption or other natural disaster, pandemic, or any terrorist attacks, or any similar event, occurrence or circumstance; (E) changes in Law or interpretation or enforcement thereof or in applicable accounting standards, principles or interpretations; (F) the Transactions, the public announcement thereof and acts of competitors or loss or threatened loss or change in status of suppliers, customers, distributors, agents, licensors, or employees, or any litigation, to the extent relating thereto or resulting therefrom; (G) actions required under or in connection with this Agreement, or other actions taken or not taken at the request or with the consent of Buyer; (H) actions taken by Buyer or its Affiliates; (I) any failure to meet internal or external estimates of revenues, earnings or other financial projections or forecasts or business or strategic plans for any period (provided that the underlying facts and circumstances giving rise to such failure which are not otherwise listed in this proviso may be taken into account in determining whether a Material Adverse Effect has occurred); (J) any matter disclosed in the Schedules or in any filings by Seller with the SEC or the Bankruptcy Court; or (K) any effect resulting from the filing of the Chapter 11 Cases and reasonably anticipated effects thereof; provided further, however, that any event, occurrence, development, circumstance, change, effect, condition or fact referred to in clauses (A) through (E) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, development, circumstance, change, effect, condition or fact has a materially disproportionate effect on the Transferred Assets, taken as a whole, as compared to the effects on other participants in the same industry as the Products.

“NASDAQ” means NASDAQ Stock Market LLC.

“NDA” means a new drug application that is filed with the FDA, seeking regulatory approval of a product under Section 505(b) of the U.S. Federal Food, Drug and Cosmetic Act, and the regulations promulgated thereunder, and all amendments and supplements thereto, and any corresponding or equivalent foreign application or registration, including all documents, data, and

other information that are necessary for gaining Regulatory Approval in the U.S., and all additions, supplements, extensions and amendments thereto.

“Order” means any order, judgment, injunction, restraint, ruling, writ, award or decree of any Governmental Entity.

“Outside Date” means nine (9) months following the date of this Agreement, or such other date as is mutually agreed upon by Buyer and Seller in writing.

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

“Patent Assignments” means the patent assignment agreement pursuant to which Seller assigns to Buyer the Patent Rights, substantially in the form attached hereto as Exhibit C.

“Patent Rights” means all rights, titles, and interests in and to issued patents and pending patent applications (which, for purposes of this Agreement, include certificates of invention, applications for certificates of invention, priority rights and industrial designs) in any country or region, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisional applications and renewals, and all letters patent or certificates of invention granted thereon, and all reissues, reexaminations, term extensions (including pediatric exclusivity patent extensions), term restorations, renewals, substitutions, confirmations, registrations, revalidations, revisions and additions of or to any of the foregoing, and all foreign counterparts of any of the foregoing.

“Permitted Encumbrances” means: (i) Encumbrances imposed by Law (Seller has no Knowledge of any Encumbrances imposed by Law on or with respect to the Transferred Assets); (ii) licenses of Intellectual Property consistent with past practice and in effect on the date of this Agreement; (iii) in the case of Intellectual Property, gaps or defects in the chain of title evident from the publicly-available records of the applicable Governmental Entity maintaining such records; and (iv) other Encumbrances which do not, individually or in the aggregate, materially interfere with the ownership, use or enjoyment of the applicable Transferred Asset.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, trust, business association, organization, Governmental Entity or other entity.

“Proceeding” means any civil, criminal, judicial, administrative or arbitral action, suit, hearing, litigation, proceeding (public or private), claim or investigation by or before a Governmental Entity.

“Product” or “Products” has the meaning set forth in the recitals.

“Product Liabilities” means all claims, Liabilities and Proceedings related to or arising from actual or alleged harm, injury, damage or death to persons, animals, property or business, irrespective of the legal theory asserted, and resulting from or alleged to result from the use, sale or manufacture of the Products.

“Product Registrations” shall mean the Regulatory Approvals necessary to permit the development, manufacture, marketing, import, distribution, or sale of the Products.

“Product Technology” means, as of the Closing Date, all Confidential Information, Inventions, and Intellectual Property, in each case, relating to the Product(s) in the Territory to the extent arising under or protected under the Laws of any jurisdiction including, but not limited to, all rights, titles and interests to all CBD and Cannabinol formulations, and all Buprenorphine formulations, as defined herein, and the rights to continue all planned or existing commercial, research and development activities including, but not limited to, non-clinical, pre-clinical (all phases), clinical (all phases), third party grants, and investigator initiated study activities, and the rights to pursue any future non-commercial, commercial, research, research and development activities or indications with any or all of these Products.

“Purchased Contracts” means all Contracts to which Seller is a party that are exclusively related to the Products, all of which are set forth on Schedule 1. Buyer may remove any Purchased Contracts from Schedule 1 up to three (3) Business Days prior to the Closing.

“Purchase Price” has the meaning set forth in Section 3.1.

“Regulatory Actions” has the meaning set forth in Section 8.1(d).

“Regulatory Approvals” means, collectively, any and all approvals (including supplements, amendments, pre- and post-approvals, pricing and reimbursement approvals), licenses, registrations or authorizations (including brand and generic names, marketing and labeling authorizations) granted by or received from any Regulatory Authority that are necessary for the Research, Development, registration, manufacture, making, formulating, having made, use and Commercialization of a pharmaceutical product (including a Product) in a given jurisdiction.

“Regulatory Authority” means the FDA or any counterpart of the FDA outside the United States, or other Governmental Entity with authority over the Research, Development, registration, manufacture, making, formulating, having made, use and Commercialization of a pharmaceutical product (including a Product), which may include the authority to grant the required reimbursement and pricing approvals for such sale.

“Regulatory Filings” means, individually or collectively, all applications, filings, submissions, licenses, registrations, permits, notifications, and authorizations (including marketing and labeling authorizations) or waivers with respect to the testing, Research, Development, registration, manufacture, making, formulating, having made, use and Commercialization of a Product (or other compound, product or therapy) made to or received from any Regulatory Authority in a given country, including INDs and NDAs.

“Representatives” means the directors, officers, managers, employees, agents or advisors (including attorneys, accountants, investment bankers, financial advisors and other consultants and advisors) of the specified party hereto.

“Research” means all activities related to the research, identification, generation, formatting, screening, testing (including in vitro and animal models, but not in human subjects), stability testing, toxicology and formulation of compounds, products or therapies.

“Round Rock Facility Lease” means that certain Lease Agreement, dated August 29, 2013, by and between Fog Break, Ltd. and Seller, as amended by that certain First Amendment to Lease

Agreement, dated November 25, 2015, by and between Fog Break, Ltd. and Seller with respect to the facility of Seller at 2700 Oakmont, Round Rock, Texas 78665.

“Sale Order” shall be an order or orders of and entered by the Bankruptcy Court in form and substance reasonably acceptable to Buyer and Seller approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Seller to consummate the Transactions.

“Sales and Marketing Materials” shall mean with respect to the Syndros Products or to the Transferred Employees all sales aid materials, sales training materials, compliance training materials, printed and electronic sales materials, promotional pieces, computers, tablets and electronics of Transferred Employees, and any other electronic equipment utilized by sales representatives for the Syndros Product detailing.

“Schedules” means, collectively, the Schedules referred to throughout this Agreement.

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

“Second Request” has the meaning set forth in Section 8.1(b).

“Securities Act” has the meaning set forth in Section 5.3(a).

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

“Seller Board” has the meaning set forth in the recitals.

“Seller Names” shall mean the names, logos and trademarks of Seller and its Affiliates used with respect to the Products by Seller and its Affiliates prior to the Closing.

“Seller Officer’s Certificate” means a certificate, dated as of the Closing Date, executed by a duly authorized officer of Seller, reasonably satisfactory in form to Buyer, as to the satisfaction of the conditions set forth in Section 11.2(a) and Section 11.2(b).

“Show-How” means all demonstrative materials, demonstrative training programs, and/or other forms of instruction in verbal or written formats that are in existence as of the Closing Date, and all “walk through” tours of Seller’s facilities, that demonstrates, illustrates, or visually conveys any technical, scientific, information and technology applicable to any acquired Intellectual Property or Know-How under this Agreement, to the extent such personnel is currently employed by Seller and available to provide such tours, and to any formulations, compositions or products or to their manufacture, development, registration, use, marketing or sale that are in existence as of the Closing Date, or to methods of assaying, or evaluating, or testing them, and all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical and analytical, safety, quality control, manufacturing, preclinical and clinical data relevant to any of the foregoing that are in existence as of the Closing Date. For the avoidance of doubt, Seller’s obligations to provide “Show-How” as described herein shall: (i) be limited to “Show-How” that is in existence as of the Closing Date, and (ii) not extend beyond three (3) months after the Closing Date.

“Syndros Product(s)” has the meaning set forth in the recitals.

“Tax(es)” means all federal, state, local and foreign taxes and other assessments in the nature of taxes, including all interest, penalties and additions with respect thereto.

“Tax Return” means any report, return, election, notice, estimate, declaration, information statement and other forms and documents (including all schedules, exhibits and other attachments thereto and including all amendments thereof) relating to and filed or required to be filed with a Taxing Authority in connection with any Taxes (including estimated Taxes).

“Taxing Authority” shall mean any government or any subdivision, agency, commission or authority thereof, or any quasi-governmental or private body, having jurisdiction over the assessment, determination, collection or other imposition of Taxes.

“Territory” means the entire world.

“Third Party” means any Person other than a Party or an Affiliate of a Party.

“Third-Party Claim” has the meaning set forth in Section 13.3(a).

“Trademark Assignments” means the assignment agreement pursuant to which Seller assigns to Buyer the purchased Marks, and any FDA-approved brand or generic names of any Products under this Agreement, substantially in the form attached hereto as Exhibit D.

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

“Transfer Taxes” has the meaning set forth in Section 3.3.

“Transferred Assets” has the meaning set forth in Section 2.2(a).

“Transferred Employees” has the meaning set forth in Section 10.1(a).

“Transferred Records” means, to the extent in the possession or control of Seller: (i) copies of all books and records, files and documents, including, but not limited to, general ledger and related source documents, copies of all customer and supplier lists, account lists, sales history, marketing studies (if any), consultant reports, studies, surveys, analyses, strategies, plans, forms, designs, diagrams, drawings, specifications, technical data, production and quality control records and formulation, correspondence with regulatory agencies (other than correspondence solely relating to Liabilities that are not Assumed Liabilities), government pricing reports, average manufacturers price reports, nFAMP reports, Medicaid and Medicare calculations and reports with respect to the Products or the Transferred Employees (the “Books and Records”), in each case, to the extent exclusively related to the Products or the Transferred Employees; (ii) Sales and Marketing Materials; and (iii) copies of all Books and Records relating primarily to the Products or the Transferred Employees which may be redacted to the extent not related to the Products or the Transferred Employees; provided, that “Transferred Records” shall exclude (x) Tax Returns (including any work product related to such Tax Returns) and (y) any Books and Records to the extent required under applicable Law regarding privacy.

“U.S.,” “U.S.A.” or “United States” means the United States of America and its territories and possessions.

“Willful Breach” has the meaning set forth in Section 12.2(a).

**Section 1.2 Interpretation.** When a reference is made in this Agreement to a Section, Article or Exhibit, such reference shall be to a Section, Article or Exhibit of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit but not otherwise defined therein shall have the meaning as defined in this Agreement. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word “including” and words of similar import when used in this Agreement will mean “including, without limitation,” unless otherwise specified. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term “or” is not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall.” The word “notice” shall mean notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement. In the event of any conflict between the main body of this Agreement and any Exhibit hereto, the main body of this Agreement shall prevail. All references to any specific Law, or article, section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement Law thereof. References to days mean calendar days unless otherwise specified.

**Section 1.3 Currency.** All currency amounts referred to in this Agreement are in U.S. Dollars, unless otherwise specified.

## ARTICLE II SALE AND PURCHASE OF TRANSFERRED ASSETS

**Section 2.1 Purchase and Sale.** Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept, all right, title and interest of Seller in, to and under the Transferred Assets, free and clear of all Encumbrances, other than Permitted Encumbrances.

### **Section 2.2 Transferred Assets and Excluded Assets.**

(a) The term “Transferred Assets” means the following assets of Seller and its Affiliates primarily related to the Products, as the same exist as of the Closing, excluding the Excluded Assets:

- (i) all Product Technology, including the Assigned Intellectual Property;
- (ii) the Purchased Contracts;
- (iii) the Transferred Records, and copies of all data or information in Seller’s possession relating to Know-How and Show-How which is reasonably necessary for Buyer’s Development or Commercialization of each Product (including for regulatory

purposes); provided that Seller shall have continued access to such Transferred Records as are necessary to administer the Chapter 11 Cases and Seller may retain copies of any Transferred Records;

(iv) all Product Registrations, Regulatory Approvals and Regulatory Filings for the Products;

(v) all purchase orders (including the right to receive revenue pursuant thereto) received from third parties for Finished Goods that remain unfilled as of the Closing;

(vi) all Inventory, including but not limited to, that Inventory on Schedule 2.2(a)(vi), which shall include a limited, world-wide, exclusive license from Seller to Buyer for Buyer to sell Finished Goods that are already packaged in Seller's existing packaging, and Inventory produced after the Closing, utilizing commodities or materials that are part of the Transferred Assets that identify Seller and/or include Seller's NDC number;

(vii) the right to enforce all rights relating to the Product Technology and to be awarded past and future damages for any infringements or misappropriations of any of the Assigned Intellectual Property;

(viii) the Round Rock Facility Lease;

(ix) the Equipment identified on Schedule 2.2(a)(ix);

(x) all Products;

(xi) all Finished Goods;

(xii) all Intellectual Property;

(xiii) all Inventions;

(xiv) all Marks;

(xv) all NDAs;

(xvi) all Patent Rights;

(xvii) all INDs;

(xviii) all Sales and Marketing Materials;

(xix) all Know-How and Show-How; and

(xx) all goodwill and other intangible assets associated with the foregoing Transferred Assets.

(b) Seller and Buyer expressly agree and acknowledge that the Transferred Assets will not include any assets of any kind, nature, character or description (whether real, personal or mixed, whether tangible or intangible, whether absolute, accrued, contingent, fixed or otherwise, and wherever situated) that are not expressly included within the definition of Transferred Assets (the “Excluded Assets”). Excluded Assets include the following:

(i) all cash, cash equivalents, bank or other deposits or similar cash items of Seller and its Affiliates;

(ii) all portions of the Transferred Records to the extent not primarily related to the Products and the Transferred Employees and all Transferred Records to the extent excluded in accordance with Laws related to privacy;

(iii) all Intellectual Property rights of Seller and all of its Affiliates other than the Product Technology;

(iv) any personnel and other files, records and documents pertaining to any employee or former employee of Seller and its Affiliates other than the Transferred Employees;

(v) all purchase orders (including the right to receive revenue pursuant thereto) received from third parties and accounts receivable, in each case, for Finished Goods that have been fulfilled or delivered prior to Closing;

(vi) Any and all litigation Proceedings (except as provided in Section 2.2(a)(vii)), avoidance Proceedings, insurance claims and/or proceeds, refunds and rebates in respect of insurance premiums, Taxes and other prepaid amounts, and Tax Returns (including any work product related to such Tax Returns); and

(vii) all assets of Seller and its Affiliates that are not Transferred Assets.

(c) Buyer acknowledges and agrees that Seller may retain, solely for archival purposes, for purposes of administration of the Debtors’ Chapter 11 Cases, and for purposes of complying with Law and for legal and regulatory purposes, one copy of all or any part of all Books and Records and other documentation that Seller delivers to Buyer pursuant to this Agreement.

### **Section 2.3 Assumed Liabilities and Excluded Liabilities.**

(a) Upon the terms and subject to the conditions of this Agreement, at the Closing, Buyer shall assume, become responsible for, pay, perform and otherwise discharge, in accordance with their respective terms, all Liabilities related to the Transferred Assets other than the Excluded Liabilities, including the following Liabilities (collectively, the “Assumed Liabilities”):

(i) all Liabilities of Seller or any of its Affiliates under the Purchased Contracts become due on or after the Closing Date;



(ii) all Liabilities arising from the Research, Development, registration, manufacture, making, formulating, having made, use or Commercialization of the Products or the Product Technology that first come into existence on or after the Closing Date;

(iii) all Liabilities constituting, or arising in connection with, accounts payable existing as of the Closing (including, for the avoidance of doubt, invoiced accounts payable and accrued but uninvoiced accounts payable) that (y) relate to the Transferred Assets and/or Purchased Contracts; or (z) are Cure Costs. As of July 31, 2019, Seller has received invoices in respect of post-petition accounts payable in respect of the Products and which remain unpaid as of the date hereof that are estimated to be approximately \$42,000.

(iv) all Liabilities with respect to the Transferred Assets or the Transferred Employees arising due to facts or conditions first in existence after the Closing;

(v) all necessary registration, maintenance, renewal and other relevant filing fees that are required to maintain the Product Technology in full force and effect that first come into existence on or after the Closing Date;

(vi) all Liabilities for Taxes relating to the Transferred Assets for all taxable periods (or portions thereof) beginning on or after the Closing Date;

(vii) in accordance with ARTICLE III, all Liabilities for Transfer Taxes in connection with this Agreement;

(viii) all Liabilities arising from any infringement claim or Proceeding brought by any third party, including any Governmental Entity, related to events first occurring on or after the Closing Date;

(ix) all Liabilities arising from any invalidity claim or Proceeding brought or asserted against the Product Technology by any third party, including any Governmental Entity related to events first occurring on or after the Closing Date;

(x) all Liabilities arising from any Governmental Entity action or notification filed by a Governmental Entity related to events first occurring on or after the Closing Date;

(xi) all Product Liabilities related to events first occurring on or after the Closing Date;

(xii) all Liabilities relating to amounts required to be paid by or obligations of Buyer hereunder, including all amounts, if any, that are required to be paid by Buyer pursuant to Section 2.4;

(xiii) all Liabilities relating to Transferred Employees to the extent attributable to any period or portion of any period following the Closing; and

(xiv) all Liabilities arising from the enforcement of rights relating to the Product Technology that first come into existence on or after the Closing Date.

(b) [intentionally omitted]

(c) Buyer will not assume or be responsible or liable for any Liabilities of Seller or its Affiliates other than the Assumed Liabilities (collectively, the “Excluded Liabilities”), including Liabilities arising out of:

(i) the Excluded Assets;

(ii) the Research, Development, registration, manufacture, making, formulating, having made, use or Commercialization of the Products or the Product Technology prior to the Closing Date, including, but not limited to, any fines, judgments, settlements or other liabilities owed to the Department of Justice or other governmental authorities based on such activities prior to the Closing Date, and including any Liabilities (including Product Liabilities) arising from Products that have been sold prior to the Closing Date; and

(iii) Buyer being deemed to be a continuation of or a successor to Seller or its Affiliates as a result of the consummation of the Transactions, except with respect to any Assumed Liabilities or as otherwise set forth herein.

**Section 2.4 Cure Amounts.** At Closing and pursuant to Section 365 of the Bankruptcy Code and the Sale Order, and subject to consent if applicable Law requires it, Seller shall assume and assign to Buyer, and Buyer shall assume from Seller, the Purchased Contracts. The cure amounts, as determined by the Bankruptcy Court, if any, necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Purchased Contracts (collectively, the “Cure Costs”), shall be paid by Buyer, at Closing or as otherwise ordered by the Bankruptcy Court, and not by Seller, and Seller shall have no liability therefor. Upon written notice to Seller, Buyer may remove any Purchased Contracts from Schedule 1 within three (3) Business Days prior to the Closing and Buyer will not be responsible for the Cure Costs with respect to the Purchased Contracts that are removed within three (3) Business Days prior to Closing.

### **ARTICLE III PURCHASE PRICE**

**Section 3.1 Purchase Price.** Upon the terms and subject to the conditions contained herein, Buyer shall pay to Seller in consideration for the Transferred Assets an amount in cash equal to the sum of Twelve Million Two Hundred Thousand Dollars (\$12,200,000) (collectively, the “Purchase Price”). Pursuant to the terms of the Escrow Agreement, Buyer has deposited with Citibank, N.A., in its capacity as escrow agent (the “Escrow Agent”), the sum of One Million Dollars (\$1,000,000) by wire transfer of immediately available funds (the “Escrowed Funds”), to be released by the Escrow Agent and delivered to either Buyer or Seller, in accordance with the provisions of this Agreement and the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrowed Funds (together with all accrued investment income thereon) shall be distributed as follows:

(a) if the Closing shall occur, the Escrowed Funds shall be released to Seller by the Escrow Agent at the Closing and applied towards the Purchase Price payable by Buyer to

Seller under Section 3.2, and all accrued investment income thereon shall be delivered to Buyer at the Closing;

(b) if this Agreement is terminated by Seller pursuant to Section 12.1(e), the Escrowed Funds, together with all accrued investment income thereon, shall be delivered to Seller; or

(c) if this Agreement is terminated for any reason other than by Seller pursuant to Section 12.1(e), the Escrowed Funds, together with all accrued investment income thereon, shall in each case be returned to Buyer.

**Section 3.2 Closing Payments.** Buyer shall pay to Seller at the Closing an amount in cash equal to the Purchase Price less the Escrowed Funds, which shall be released to Seller by the Escrow Agent at the Closing pursuant to Section 3.1(a).

**Section 3.3 Transfer Taxes.** Any transfer, conveyance, sales, use, documentary, filing, recording, value added, stamp, registration and similar Taxes, fees, duties or governmental charges (including any interest and penalties thereon) payable in connection with the transactions contemplated by this Agreement ("Transfer Taxes") shall be paid by Buyer. Each party shall use Commercially Reasonable Efforts to claim any available exemption from such Transfer Taxes and to cooperate with the other party to obtain such exemption. The party responsible for filing any documents (including all Tax Returns) with respect to any Transfer Taxes under applicable Law shall timely file all such documents (including all Tax Returns) with the cooperation of the other party.

**Section 3.4 Program Fees.** Buyer and Seller agree that the fees that are required to be paid to the FDA to produce, market and sell prescription pharmaceutical products under the Prescription Drug User Fee Act shall be prorated so as to reimburse Seller for any portion thereof that has been paid in advance by Seller in respect of the Syndros Products. Buyer shall pay to Seller in cash at Closing a prorated amount of the total fees paid by Seller and its Affiliates in respect of the Syndros Products based on when the Closing Date occurs, with Buyer being responsible for the fraction of such total fee amount paid by Seller and its Affiliates in respect of the Syndros Products that is obtained by dividing the number of days from the Closing Date through the end of the program payment period for which Seller has paid such fees in advance by 365.

#### **ARTICLE IV THE CLOSING**

**Section 4.1 Closing Date.** The closing of the purchase and sale of the Transferred Assets (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 on the fifteenth (15<sup>th</sup>) Business Day following the date on which all of the conditions to each party's obligations under ARTICLE XI have been satisfied or (if permitted) waived, or at such other time, date and/or place as is mutually agreed to by the parties hereto (such date of the Closing being hereinafter referred to as the "Closing Date"). The Closing will be deemed to occur as of 12:01 A.M., New York, New York, U.S.A. time on the Closing Date.

**Section 4.2 Transactions to Be Effected at the Closing.** At the Closing:

- (a) Seller shall execute and deliver or cause to be executed and delivered to Buyer each of the items referred to in Section 11.2(c);
- (b) Buyer shall, or if applicable, shall cause its Affiliate to, execute and deliver or cause to be executed and delivered to Seller each of the items referred to in Section 11.3(d); and
- (c) Buyer shall pay to Seller the Purchase Price (less the Escrowed Funds, which shall be released to Seller by the Escrow Agent at the Closing pursuant to Section 3.1(a)) by wire transfer of immediately available funds, to the account or accounts designated in writing by Seller to Buyer at least two (2) Business Days prior to the Closing.

**ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer as follows:

**Section 5.1 Seller Organization; Good Standing.** Seller is duly incorporated, validly existing and in good standing under the laws of Delaware. Seller is duly qualified to conduct business as a foreign corporation and is in good standing in each jurisdiction where the ownership or use of the Transferred Assets makes such qualification necessary, except where the failure to so qualify or be in good standing would not cause a Material Adverse Effect.

**Section 5.2 Authority; Execution and Delivery.** Except for such authorization as is required by the Bankruptcy Court (as hereinafter provided for), Seller has full corporate power and authority to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party. The execution, delivery and performance by Seller of this Agreement and each of the Ancillary Agreements to which it is a party and the consummation by Seller of the Transactions have been duly and validly authorized by all necessary corporate action of Seller. This Agreement has been duly executed and delivered by Seller and (assuming the due authorization, execution and delivery of this Agreement by Buyer and the entry of the Sale Order) constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar Law affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law (the "Bankruptcy and Equity Exception"). When each other Ancillary Agreement to which Seller is or will be a party has been duly executed and delivered by Seller (and assuming the due authorization, execution and delivery by each other party thereto and the entry of the Sale Order), such Ancillary Agreement will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, subject to the Bankruptcy and Equity Exception. The Seller Board has: (i) determined that this Agreement and the Transactions are fair to and in the best interests of Seller and its relevant stakeholders; and (ii) declared it advisable to enter into this Agreement and approved the execution, delivery, and performance of this Agreement and the Ancillary Agreements.

**Section 5.3 Consents; No Violations, Etc.**

(a) Other than the entry of the Sale Order (and the expiration of any applicable stay), the delivery to the FDA of the FDA Transfer Letters and any necessary filings, notices, reports, consents, registrations, approvals, permits, expirations of waiting periods or authorizations required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Securities Act of 1933, as amended (the “Securities Act”) and the rules and regulations of the NASDAQ, no filings, notices and/or reports are required to be made by Seller with, nor are any consents, registrations, approvals, permits, expirations of waiting periods or authorizations required to be obtained by Seller from, any Governmental Entity in connection with the execution and delivery of this Agreement and each of the Ancillary Agreements and the consummation of the Transactions and the compliance with the terms hereof and thereof, except, in each case, those that the failure to make or obtain would not cause a Material Adverse Effect or prevent, materially delay or materially impair the ability of Seller to consummate the Transactions.

(b) The execution and delivery of this Agreement and each of the Ancillary Agreements do not, and the consummation of the Transactions and the compliance with the terms hereof and thereof will not: (i) subject to the entry of the Sale Order, violate any Law applicable to Seller; (ii) conflict with any provision of the certificate of incorporation or bylaws of Seller; or (iii) subject to the entry of the Sale Order, result in any breach of, constitute a default (or an event that, with or without notice or lapse of time or both, would become a default) under, require any consent of or notice to any Person pursuant to, give to others any right of termination, amendment, modification, acceleration or cancellation of, allow the imposition of any fees or penalties, require the offering or making of any payment or redemption, give rise to any increased, guaranteed, accelerated or additional rights or entitlements of any Person or otherwise adversely affect any rights of Seller under, or result in the creation of any Encumbrance on any of the Transferred Assets pursuant to, any Contract to which Seller is a party or by which it is otherwise bound, including any Contract related to the Products, except for, with respect to the foregoing clause (iii), such conflicts which would not materially affect or materially interfere with Seller’s performance of its obligations hereunder or under any Ancillary Agreement.

**Section 5.4 Title to Transferred Assets; Inventory.** Seller and its Affiliates have good and valid title to all of the Transferred Assets, free and clear of all Encumbrances, other than Permitted Encumbrances. The delivery to Buyer of the Bill of Sale and other instruments of assignment, conveyance and transfer pursuant to this Agreement and the Ancillary Agreements will transfer to Buyer good and valid title to all of the Transferred Assets, free and clear of all Encumbrances, other than Permitted Encumbrances, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code.

#### **Section 5.5 Regulatory Issues.**

(a) None of Seller or any of its Affiliates has received any written notice that the FDA or any other Governmental Entity with jurisdiction over the Products has commenced or will commence any action to: (i) withdraw any Regulatory Approval; (ii) enjoin, terminate, or suspend production, marketing, sale or distribution of the Products; or (iii) issue or require recalls, safety alerts, detentions or seizures of the Products.

(b) To Seller's Knowledge, the Products currently are being manufactured and marketed in compliance in all material respects with all requirements under applicable Laws as of the date hereof.

(c) To Seller's Knowledge, Seller has made all notifications, submissions and reports required by the FDA or any other Governmental Entity, including any such obligation arising under any administrative or regulatory action, FDA inspection, FDA warning or untitled letter, or other notice, response, or commitment made to or with the FDA or any other Governmental Entity in relation to the Products and all such notifications, submissions and reports were true, complete and correct in all material respects as of the date of submission to the FDA or any other Governmental Entity.

(d) Since January 1, 2018, all material Product fees have been timely paid to the FDA by Seller prior to the Closing Date with respect to the Products in the United States.

**Section 5.6 Brokers.** Seller will be solely responsible for any commission, finder's fee or other fees and expenses for services rendered by any broker, finder, financial advisor or investment bank in connection with the Transactions based on arrangements made by Seller or any of its Affiliates.

**Section 5.7 Purchased Contracts.** Each Purchased Contract is a legal, valid and binding obligation of Seller or its Affiliates and, to the Knowledge of Seller, each other party thereto, enforceable against Seller or its Affiliates and each other party in accordance with its terms, subject to the Bankruptcy and Equity Exception. Except as would not cause a Material Adverse Effect and subject to the payment of any amounts determined to be payable pursuant to Section 2.4, Seller is not in breach of any such Purchased Contract.

**Section 5.8 Intellectual Property.**

(a) Schedule 5.8(a) sets forth, as of the date of this Agreement, a list of all issued or registered Intellectual Property that is reasonably known or believed by Seller to be part of the Product Technology (the "Assigned Intellectual Property") as of the Closing Date, including for each such item, as applicable: (i) the registration or application number for each item of Assigned Intellectual Property; (ii) the owner of record; (iii) the registration or issuance date, as applicable; and (iv) the jurisdiction in which each such item of Assigned Intellectual Property has been issued or registered. With respect to each item of the Assigned Intellectual Property required to be disclosed in Schedule 5.8(a), to Seller's Knowledge, (x) such item is subsisting, valid and enforceable and (y) as of the Closing Date, all necessary fees due and documents and recordations with the relevant Governmental Entity in connection therewith have been paid and filed for the purposes of prosecuting, perfecting and maintaining such item.

(b) To Seller's Knowledge, no item of Assigned Intellectual Property is subject to any outstanding order, judgment or decree imposing restrictions on the ownership, validity, or enforceability of such Assigned Intellectual Property.

(c) Seller and its Affiliates own all Assigned Intellectual Property, free and clear of Encumbrances other than Permitted Encumbrances.

(d) As of the date hereof, to Seller's Knowledge, there is no material judicial, administrative or arbitral action, suit, hearing, inquiry, investigation or other proceeding (public or private) before any Governmental Entity alleging that the conduct of the manufacture and sale of the Products in the Territory constitutes infringement, misappropriation or other violation of any material Intellectual Property rights of any third party. Except as disclosed in Schedule 5.8(d), as of the date hereof, to Seller's Knowledge: (i) since January 1, 2018 none of Seller or its Affiliates has received any written notice that remains unresolved from any third party challenging the validity, enforceability or ownership of any of the Assigned Intellectual Property; and (ii) no third party is infringing, misappropriating or otherwise violating any of the Assigned Intellectual Property.

(e) Notwithstanding anything to the contrary, Buyer acknowledges and agrees that the only representations and warranties given in relation to matters relating to the Intellectual Property rights specifically addressed in this Section 5.8 are those set out in this Section 5.8, and no other representation or warranty is given in relation to such matters.

**Section 5.9 Absence of Debarment.** Except as has been disclosed in writing to Buyer on or prior to the date hereof, none of Seller, its officers, directors, managers, employees, agents, consultants or any other Person employed or retained by Seller has been or is: (a) debarred, convicted, or is subject to a pending debarment or conviction, pursuant to section 306 of the United States Federal Food, Drug, and Cosmetic Act ("FFDCA"), 44 U.S.C. § 335a; (b) listed by any government or regulatory agency as ineligible to participate in any government healthcare programs or government procurement or non-procurement programs (as that term is defined in 42 U.S.C. 1320a-7b(f)), or excluded, debarred, suspended or otherwise made ineligible to participate in any such program; or (c) convicted of a criminal offense related to the provision of healthcare items or services, or is subject to any such pending action.

**Section 5.10 No Other Representations.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SCHEDULES) OR IN THE ANCILLARY AGREEMENTS, SELLER HEREBY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER BY ANY REPRESENTATIVE OF SELLER OR ANY OF ITS AFFILIATES). SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, TO BUYER REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE TRANSFERRED ASSETS OR ANY OF THE PRODUCTS.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

**Section 6.1 Buyer Organization; Good Standing.** Buyer is duly incorporated, validly existing and in good standing under the laws of the state of Delaware. Buyer has the requisite

corporate power and authority to carry on its business as it is currently being conducted. Buyer is duly qualified to conduct business as a foreign corporation and is in good standing in every jurisdiction where the nature of the business conducted by it makes such qualification necessary, except where the failure to so qualify or be in good standing would not prevent or materially delay the consummation of the Transactions.

**Section 6.2 Authority; Execution and Delivery.** Buyer has full corporate power and authority to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party. The execution, delivery and performance by Buyer of this Agreement and each of the Ancillary Agreements to which it is a party and the consummation by Buyer of the Transactions have been duly and validly authorized by all necessary corporate action of Buyer. This Agreement has been duly executed and delivered by Buyer and (assuming the due authorization, execution and delivery of this Agreement by Seller ) constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. When each other Ancillary Agreement to which Buyer is or will be a party has been duly executed and delivered by Buyer (and assuming due authorization, execution and delivery by each other party thereto ), such Ancillary Agreement will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms. The Buyer Board has: (a) determined that this Agreement and the Transactions are fair to and in the best interests of Buyer and its equityholders; and (b) declared it advisable to enter into this Agreement and approved the execution, delivery, and performance of this Agreement and the Ancillary Agreements.

**Section 6.3 Consents; No Violations, Etc.**

(a) Other than the delivery to the FDA of the FDA Transfer Letters and any necessary filings, notices, reports, consents, registrations, approvals, permits, expirations of waiting periods or authorizations required under the HSR Act, the Exchange Act, the Securities Act and the rules and regulations of the NASDAQ and except for compliance with the applicable requirements of the Sale Order and the Bidding Procedures Order, no filings, notices and/or reports are required to be made by Buyer with, nor are any consents, registrations, approvals, permits, expirations of waiting periods or authorizations required to be obtained by Buyer from, any Governmental Entity in connection with the execution and delivery of this Agreement and each of the Ancillary Agreements and the consummation of the Transactions and the compliance with the terms hereof and thereof, except, in each case, those that the failure to make or obtain would not cause a material adverse effect on Buyer or prevent, materially delay or materially impair the ability of Buyer to consummate the Transactions.

(b) The execution and delivery of this Agreement and each of the Ancillary Agreements do not, and the consummation of the Transactions and the compliance with the terms hereof and thereof will not: (i) violate any Law applicable to Buyer; (ii) conflict with any provision of the certificate of incorporation, bylaws or other organizational documents of Buyer; or (iii) result in any breach of, constitute a default (or an event that, with or without notice or lapse of time or both, would become a default) under, require any consent of or notice to any Person pursuant to, give to others any right of termination, amendment, modification, acceleration or cancellation of, allow the imposition of any fees or penalties, require the offering or making of any payment or redemption, give rise to any increased, guaranteed, accelerated or additional rights or entitlements of any Person or otherwise adversely affect any rights of Buyer under, or result in the creation of



any Encumbrance on any of the Transferred Assets or the assets related thereto, or any of the Products, pursuant to any Contract to which Buyer is a party or by which it is otherwise bound, except for, with respect to the foregoing clause (iii), such conflicts which would not materially affect or materially interfere with Buyer's performance of its obligations hereunder or under any Ancillary Agreement.

**Section 6.4 Brokers.** Buyer will be solely responsible for any commission, finder's fee or other fees and expenses for services rendered by any broker, finder, financial advisor or investment bank in connection with the Transactions based on arrangements made by Buyer or any of its Affiliates.

**Section 6.5 Availability of Funds.** Buyer and its Affiliates have, and at Closing shall have, sufficient cash, financial resources and credit to pay the Purchase Price, to make any other necessary payment contemplated by this Agreement or any of the Ancillary Agreements to be made at Closing, including fees and expenses in connection with the consummation of the Transactions, and to perform all of their obligations contemplated by this Agreement and the Ancillary Agreements to be performed at Closing. Buyer acknowledges that the obligations of Buyer and its Affiliates to consummate the Transactions are not and will not be subject to the receipt by Buyer of any financing or the consummation of any other transaction.

**Section 6.6 Bankruptcy.** There are no bankruptcy, reorganization or insolvency proceedings pending against, being contemplated by or, to the Knowledge of Buyer, threatened against, Buyer.

**Section 6.7 Absence of Debarment.** Except as has been disclosed in writing to Seller on or prior to the date hereof, none of Buyer, its officers, directors, managers, employees, agents, consultants or any other Person employed or retained by Buyer has been or is: (a) debarred, convicted, or is subject to a pending debarment or conviction, pursuant to section 306 of the FFDCA, 44 U.S.C. § 335a; (b) listed by any government or regulatory agency as ineligible to participate in any government healthcare programs or government procurement or non-procurement programs (as that term is defined in 42 U.S.C. 1320a-7b(f)), or excluded, debarred, suspended or otherwise made ineligible to participate in any such program; or (c) convicted of a criminal offense related to the provision of healthcare items or services, or is subject to any such pending action.

**Section 6.8 No Seller Warranty; Disclaimer of Other Representations and Warranties.** EXCEPT FOR THE SPECIFIC REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY SELLER IN ARTICLE V OF THIS AGREEMENT OR THE ANCILLARY AGREEMENTS, BUYER ACKNOWLEDGES AND AGREES THAT SELLER IS NOT MAKING AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THE TRANSFERRED ASSETS, SELLER, SELLER'S AFFILIATES, OR ANY OF SELLER'S OR ITS AFFILIATES' RESPECTIVE BUSINESSES, ASSETS, LIABILITIES, OPERATIONS, PROSPECTS, OR CONDITION (FINANCIAL OR OTHERWISE), INCLUDING WITH RESPECT TO NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY ASSETS, THE NATURE OR EXTENT OF ANY LIABILITIES, THE EFFECTIVENESS OR THE SUCCESS OF ANY OPERATIONS, OR THE

ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION MEMORANDA, DOCUMENTS, PROJECTIONS, MATERIAL OR OTHER INFORMATION (FINANCIAL OR OTHERWISE) REGARDING THE TRANSFERRED ASSETS, SELLER OR SELLER'S AFFILIATES, FURNISHED TO BUYER OR ITS REPRESENTATIVES OR MADE AVAILABLE TO BUYER OR ITS REPRESENTATIVES IN ANY "DATA ROOMS," "VIRTUAL DATA ROOMS," MANAGEMENT PRESENTATIONS OR IN ANY OTHER FORM IN EXPECTATION OF, OR IN CONNECTION WITH, THE TRANSACTIONS CONTEMPLATED HEREBY, OR IN RESPECT OF ANY OTHER MATTER WHATSOEVER.

## **ARTICLE VII BANKRUPTCY COURT MATTERS**

**Section 7.1 Bankruptcy Court Approval.** This Agreement is subject to approval by the Bankruptcy Court. In addition, Seller shall have the right to perform any and all other acts which are required under the Bankruptcy Code, the Bidding Procedures Order or other applicable Law.

**Section 7.2 Bankruptcy Court Filings.** Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Buyer in connection with the Purchased Contracts, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. Notwithstanding anything to the contrary herein, Seller shall not be obligated to assume and assign any Purchased Contract pursuant to this Section 7.2 with respect to which Buyer fails to satisfy the Bankruptcy Court as to adequate assurance of future performance or for which consent is required to assume and assign such Purchased Contract and such consent has not been obtained; provided, however, that the Parties shall use their reasonable best efforts to obtain all such consents. Buyer shall not, without the prior written consent of Seller, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Transferred Assets hereunder. In the event the entry of the Sale Order shall be appealed, Seller and Buyer shall use their respective reasonable best efforts to defend such appeal.

**Section 7.3 Back-up Bidder.** Seller and Buyer agree that, in the event that Buyer is not the winning bidder at an auction undertaken pursuant to the Bidding Procedures Order for the Products (the "Auction"), and if and only if (a) Buyer submits the second highest or second best bid at the Auction for the Products, and (b) Seller gives notice to Buyer on or before the Back-up Termination Date, stating that Seller: (i) failed to consummate the sale with the winning bidder; and (ii) terminated the purchase agreement with the winning bidder, Buyer shall promptly consummate the Transactions upon the terms and conditions as set forth herein, including the Purchase Price, as the same may have been increased by Buyer at the Auction.

### **Section 7.4 Assumption and Assignment of Contracts.**

(a) If Buyer determines to supplement the Purchased Contracts with other Contracts or Leases listed on Seller's notice of assumption (the "Assumption and Assignment"),

Notice”) that was previously filed with the Bankruptcy Court, listing the Purchased Contracts, together with any other Contracts and Leases (as defined in the Bidding Procedures Order) that may be designated for assumption and assignment pursuant to the Bidding Procedures Order, Buyer shall do so at or prior to the conclusion of the Auction in accordance with the terms of this Agreement, the terms of the Bidding Procedures Order and with Seller’s consent.

(b) The Assumption and Assignment Notice shall set forth a good faith estimate of the amount of Cure Costs applicable to each Purchased Contract (and if no Cure Cost is estimated to be applicable with respect to any particular Purchased Contract, the amount of such Cure Cost designated for such Purchased Contract shall be “\$0.00”).

## ARTICLE VIII CERTAIN PRE-CLOSING COVENANTS AND AGREEMENTS

### Section 8.1 Filings; Other Actions; Notification and Cooperation.

(a) Seller and Buyer shall cooperate with each other and use, and shall cause their respective Affiliates to use, their respective best efforts to take (or cause to be taken) all actions, and do (or cause to be done) all things necessary, proper or advisable under this Agreement and applicable Law to consummate and make effective the Transactions as expeditiously as possible, and in no event later than the Outside Date, including: (i) preparing and filing all documentation to effect all necessary notices, reports and other filings (and in any event, by filing by no later than (5) Business Days after the entry of the Sale Order the notifications, filings and other information required to be filed under the HSR Act with respect to the Transactions, unless mutually agreed otherwise) and to obtain as expeditiously as possible all consents, registrations, approvals, permits, expirations of waiting periods and authorizations necessary or advisable to be obtained from any third party or any Governmental Entity in order to consummate the Transactions; (ii) satisfying the conditions to consummating the Transactions; (iii) obtaining (and cooperating with each other in obtaining) any consent, approval of, waiver or any exemption by, any non-governmental third party, in each case, to the extent necessary, proper or advisable in connection with the Transactions; and (iv) executing and delivering any reasonable additional instruments necessary to consummate the Transactions and to fully carry out the purposes of this Agreement.

(b) Subject to the other provisions of this Section 8.1, in the event that the parties receive a request for information or documentary material pursuant to the HSR Act or any other Antitrust Laws (a “Second Request”), unless otherwise agreed to in writing by Seller, the parties hereto will use their best efforts to submit an appropriate response to, and to certify compliance with, such Second Request as promptly as practicable, and counsel for both parties will closely cooperate during the entirety of any such Second Request review process. None of the parties, including their respective Affiliates, shall take, cause or permit to be taken, or omit to take, any action which may materially delay or prevent consummation of the Transactions, unless otherwise agreed to by the parties. No party hereto, without the other party’s prior written consent, shall: (i) enter into any timing, settlement or similar agreement, or otherwise agree or commit to any arrangement, that would have the effect of extending, suspending, lengthening or otherwise tolling the expiration or termination of the waiting period applicable to the contemplated transactions under the HSR Act or any Antitrust Laws; or (ii) enter into any timing or similar

agreement, or otherwise agree or commit to any arrangement, that would bind or commit the parties not to consummate the Transactions (or that would otherwise prevent or prohibit the parties from consummating the Transactions). As used in this Agreement, the term “Antitrust Laws” means the Sherman Act of 1890, the Clayton Act of 1914, the Federal Trade Commission Act of 1914, the HSR Act and all other federal, state and foreign statutes, rules, regulations, orders, decrees and other Laws and Orders that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or competition.

(c) Buyer and Seller shall cooperate and shall have joint decision making authority with respect to the appropriate course of action with respect to obtaining the consents, approvals, permits, waiting period expirations or authorizations of any Governmental Entity required to consummate the Transactions prior to the Outside Date. No party hereto or its counsel shall independently participate in any substantive call or meeting with any Governmental Entity in respect of any such filing, investigation, or other inquiry relating to the matters that are the subject of this Section 8.1 without first giving the other party or its counsel prior notice of such call or meeting and, to the extent permitted by such Governmental Entity, the opportunity to attend and participate. In furtherance of the foregoing and to the extent permitted by applicable Law: (i) each party shall notify the other, as far in advance as practicable, of any filing or material or substantive communication or inquiry it or any of its Affiliates intends to make with any Governmental Entity relating to the matters that are the subject of this Section 8.1; (ii) prior to submitting any such filing or making any such communication or inquiry, such party shall provide the other party and its counsel a reasonable opportunity to review, and shall consider in good faith the comments of the other party in connection with, any such filing, communication or inquiry; (iii) promptly following the submission of such filing or making such communication or inquiry, such party shall provide the other party with a copy of any such filing or, if in written form, communication or inquiry; and (iv) such party shall consult with the other party in connection with any inquiry, hearing, investigation or litigation by, or negotiations with, any Governmental Entity relating to the Transactions, including the scheduling of, and strategic planning for, any meetings with any Governmental Entity relating thereto. In exercising the foregoing cooperation rights, Seller and Buyer each shall act reasonably and as promptly as reasonably practicable. Notwithstanding the foregoing, materials provided pursuant to this Section 8.1 may be reasonably redacted as necessary to address reasonable privilege concerns.

(d) In furtherance and not in limitation of the covenants of the parties contained in this Section 8.1, Buyer, including its Affiliates, shall use its best efforts to resolve such objections, if any, as may be asserted by any Governmental Entity in connection with the HSR Act and any other applicable Antitrust Laws with respect to the Transactions and to avoid the entry of, or effect the dissolution of, any decree, order, judgment, injunction, temporary restraining order or other order in any suit or proceeding, that would otherwise have the effect of preventing the consummation of the Transactions. For the purposes of this Section 8.1, “best efforts” shall include taking any and all actions (such actions, the “Regulatory Actions”) necessary to obtain the consents, approvals, permits, waiting period expirations or authorizations of any Governmental Entity required to consummate the Transactions as expeditiously as possible and in no event later than the Outside Date, including: (x) committing, agreeing, or submitting (or offering to commit, agree, or submit) to any consent decree, hold separate order, sale, divestiture, lease, license, transfer, disposal, Lien, other change or restructuring of, or operating restriction with respect to the businesses, properties, product lines, assets, permits, operations, rights, or interest therein of

Buyer, its Affiliates, the Transferred Assets or any of the Products; or (y) committing, agreeing, or submitting (or offering to commit, agree, or submit) to any action or agreeing to any remedies, terms or conditions in connection with its obligations under this Section 8.1 provided that those actions, remedies, terms or conditions are conditioned on the consummation of the Transactions contemplated by this Agreement.

(e) In furtherance and not in limitation of the covenants of the parties contained in this Section 8.1, if any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted (or threatened to be instituted) challenging the Transactions as violative of any Antitrust Law, each of Seller and Buyer shall use best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Transactions.

(f) Information. Seller and Buyer each shall, upon request by the other, promptly furnish the other with all information concerning itself, its Affiliates, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with any statement, filing, notice or application made by or on behalf of Buyer, Seller or any of their respective Affiliates to any third party or any Governmental Entity in connection with the Transactions, all of which information shall be true and correct when provided; provided that each Party shall be entitled to redact discussions of the transaction value and competitively sensitive information, and may reasonably designate applicable materials to be reviewed solely by the other Party's outside counsel.

(g) Status. Seller and Buyer each shall keep the other reasonably apprised of the status of matters relating to completion of the Transactions, including promptly furnishing the other with copies of notices or other communications received by Seller or Buyer, as the case may be, or any of their respective Affiliates from any third party or any Governmental Entity with respect to the Transactions, other than immaterial communications.

(h) Fees. Buyer shall bear the cost of any filing fee payable to a Governmental Entity in connection with any filings made under this Section 8.1.

**Section 8.2 Covenants Regarding Information.** Seller shall, and shall use its reasonable best efforts to cause its Affiliates to, until the earlier of the Closing Date and the date this Agreement is terminated pursuant to the terms hereof, afford Buyer and its Representatives reasonable access (including for inspection and copying, at Buyer's expense) at all reasonable times to the Transferred Assets and Seller's Representatives, and the Books and Records relating to the Transferred Assets and the Products, and shall, and shall use its reasonable best efforts to cause its Affiliates to, furnish Buyer with such financial, operating and other data and information in connection with the Transferred Assets and the Products as Buyer may reasonably request; provided that any such access or furnishing of information shall be in accordance with applicable Law, at Buyer's expense, under the supervision of Seller's or its Affiliates' personnel, and in such manner as not to interfere unreasonably with the businesses, personnel or operations of Seller or any of its Affiliates; provided, further, that (A) Buyer shall not, without the prior written consent of Seller (not to be unreasonably withheld or delayed), contact any customer, client, vendor, employee, supplier or competitor of Seller relating to the Products, (B) the auditors and

accountants of Seller or any of its Affiliates shall not be obliged to make any work papers available to any Person, and (C) Seller shall be entitled to restrict such access, (x) as determined, in its respective reasonable discretion, to be appropriate to ensure compliance with any Law and (y) to preserve any applicable attorney client privilege and to comply with contractual confidentiality obligations.

## **ARTICLE IX CERTAIN OTHER COVENANTS AND AGREEMENTS**

**Section 9.1 Books and Records.** For a period of six (6) years after the Closing, Buyer shall: (a) retain the pre-Closing Transferred Records and all other pre-Closing books and records related to the Transferred Assets, the Assumed Liabilities and the business related to any of the Products held by Buyer or any of its Affiliates; and (b) upon reasonable notice and during normal business hours, cooperate with and provide Seller, any of Seller's Affiliates, and the officers, employees, agents and Representatives of Seller and Seller's Affiliates reasonable access (including the right to make copies at Seller's expense or the expense of any Affiliate of Seller) to such books and records and to Buyer's Representatives, to the extent necessary for a reasonable business purpose, including as may be necessary for the preparation of financial statements, regulatory filings, Tax Returns, in connection with any Proceeding, or in connection with the administration of the Chapter 11 Cases, and to any and all books and records relating to any Purchase Price payments or any related reports, including all documents, work papers, schedules, memoranda, and records used by or prepared by Buyer or its Representatives in preparing any such reports, together with any other information related thereto which Seller may reasonably request. For the avoidance of doubt, in connection with any reasonable business purpose, including in connection with administering, or satisfying the Debtors' obligations in connection with administering, the Chapter 11 Cases, Buyer shall: (i) afford the Debtors access to the Transferred Records and all other books and records related to the Transferred Assets and the Products; (ii) furnish to the Debtors financial, operating and other data and information in connection with the Transferred Assets and the Products; and (iii) make available to the Debtors those Transferred Employees whose assistance, expertise, testimony, notes, recollections or presence may be reasonably necessary to assist in the administration of the Chapter 11 Cases. Notwithstanding anything herein to the contrary, any Transferred Records that are owned by Seller but not in its possession or control as of the Closing Date shall not be physically delivered to Buyer at the Closing; provided, however, that Seller shall disclose the location and custodian (with contact information) of the Transferred Records not delivered to Buyer at Closing. Any such Transferred Records shall be delivered to Buyer as soon as practicable after such time, if any, that Seller comes in possession or control of such Transferred Records.

**Section 9.2 Assumption of Regulatory Commitments; Transfer of Product Registrations.** The Parties shall reasonably cooperate with each other in any necessary or desirable communications with the FDA regarding the transfer of the rights to the Product Registrations. Notwithstanding any delay in transferring the rights to the Product Registrations to Buyer, as between the Parties, Buyer shall be exclusively responsible for (and shall bear the cost of), and shall discharge all liabilities related to, the manufacture, packaging, labeling, brand and generic naming of Products, promotion, marketing, handling, offering for sale or sale of the Products by or on behalf of Buyer after the Closing. From and after the Closing Date, Buyer will assume control of, and responsibility for, all costs and Liabilities arising from or related to any

commitments or obligations to any Governmental Entity involving the Transferred Assets and any of the Products, to the extent arising from or relating to any of the Products being Researched, Developed, registered, manufactured, made (including formulation), have made, used or Commercialized by Buyer after the Closing Date. Seller shall use all Commercially Reasonable Efforts to complete the transfer of each Product Registration as promptly as practicable after the Closing. Buyer shall use all Commercially Reasonable Efforts to assist Seller in the transfer of the Product Registrations to Buyer, accept the transfer of the Product Registrations and formalize with Seller and any applicable Regulatory Authority, as promptly as practicable after the Closing Date, all necessary documents. Following such transfer(s), Seller shall not retain any rights in any Product Registration.

**Section 9.3 Intellectual Property.** If, during the twelve (12) month period following the Closing Date, either Party becomes aware of any Intellectual Property which should have been (A) retained by Seller or its Affiliate, but is instead transferred to Buyer or its Affiliates, or (B) transferred to Buyer or its Affiliates, but is instead retained by Seller or its Affiliate, then such Parties shall: (i) promptly notify the other Party hereto; (ii) execute all instruments, agreements or documents as may be reasonably necessary for the purpose of transferring such Intellectual Property to such other Party; and (iii) use commercially reasonable efforts to do all such further acts or things as may be reasonably necessary to validly effect the transfer and vest the relevant interest in such Intellectual Property in such other Party.

**Section 9.4 Confidentiality.** Notwithstanding anything to the contrary contained in the Confidentiality Agreement: (i) Buyer shall hold, and shall cause its Affiliates and Representatives to hold, in confidence all documents and information furnished to it by or on behalf of Seller in connection with this Agreement and the transactions contemplated hereby, including all Confidential Information, pursuant to the terms of the Confidentiality Agreement, which shall continue in full force and effect and shall not be terminated until the earlier to occur of: (A) two (2) years following the date this Agreement is terminated; and (B) two (2) years following the date the last Purchase Price payment is made (the “CA Termination Date”), at which time such Confidentiality Agreement and the obligations of the parties thereunder shall terminate; and (ii) Buyer shall not be permitted to, and shall cause its Affiliates not to, terminate the Confidentiality Agreement prior to the CA Termination Date; provided, however, that notwithstanding the foregoing, each of Buyer and Seller and their respective Affiliates and Representatives is expressly permitted to provide any information, knowledge or data that is requested by a Governmental Entity in connection with any consents, registrations, approvals, permits, expirations of waiting periods and authorizations necessary or advisable to be obtained in order to consummate the Transactions; and provided, further, that Seller and its Affiliates and Representatives shall be permitted to make any disclosures of documents and information, including Confidential Information, to any Persons as they deem necessary, advisable or appropriate in connection with the administration of the Chapter 11 Cases and, in the case of any public disclosures of Transferred Records retained by Seller that are not already publicly available, Seller shall provide written notice to Buyer in advance of any such disclosure to the extent practicable so as to enable Buyer to seek, at Buyer’s sole cost and expense, an appropriate protective order or other remedy.

**Section 9.5 Trade Notification; Use of Seller Names.** Seller and Buyer shall consult with each other on the timing, method, form and content of notifications to customers and suppliers regarding the transactions contemplated by this Agreement, and shall consider in good

faith any comments or proposed changes received from the other. Buyer acknowledges and agrees that all rights, titles and interests in and to the Seller Names are owned exclusively by Seller and that, except as expressly provided in this Section 9.5, Buyer shall have no right to use such Seller Names. Seller hereby grants Buyer a limited, non-exclusive, non-transferrable, non-sublicenable right and license to use the Seller Names solely on Finished Goods of the Products (including the Finished Goods packaging and related coupons existing as of the Closing Date) in the Inventory as they exist on the Closing Date. Such right and license granted under this Section 9.5 shall extend after the Closing Date until such a date when the Finished Goods in the Inventory existing on the Closing Date are exhausted or no longer salable. For clarity, the right and license granted under this Section 9.5 does not extend to any works in progress of the Products in the Inventory as of the Closing Date. In no event shall Buyer (a) use any Seller Names in any manner or for any purpose different from the use of such Seller Names by Seller immediately prior to the Closing Date to market, distribute and sell the Products in the Territory or (b) manufacture or produce, or cause or permit any third party to manufacture or produce, any labels, packaging or advertising, marketing, sales or promotional materials using or otherwise incorporating any Seller Names in any manner.

**Section 9.6 Post-Closing Orders and Payments.** From and after 12:01 A.M. (New York, New York, U.S.A. time) on the day immediately following the Closing Date: (a) Seller will promptly deliver to Buyer any payments received by Seller from third parties for orders of Finished Goods fulfilled by Buyer on or after the Closing Date, and refer all inquiries it will receive with respect to any of the Transferred Assets and any of the Combined Products (other than with respect to Excluded Assets or Excluded Liabilities), to Buyer or its designee or Affiliate; and (b) Buyer will promptly deliver to Seller any payments received by Buyer from third parties for orders of Finished Goods fulfilled by Seller or its Affiliates prior to the Closing Date.

## ARTICLE X EMPLOYEE MATTERS

### **Section 10.1 Employee Matters.**

(a) Schedule 10.1(a) sets forth a mutually agreed list of employees of Seller and its Affiliates who will receive offers of employment from Buyer or its Affiliates at least three (3) Business Days prior to the Closing Date, contingent upon the occurrence of the Closing (collectively, the “Transferred Employees”), which offers shall provide for terms and conditions of employment that are not less favorable than those provided by Seller to such employees during the twelve- (12-) month period ending on the Closing Date.

(b) Notwithstanding any other provision of this Agreement to the contrary, each of Seller and Buyer hereby acknowledges and agrees that all provisions contained in this Section 10.1 are included for the sole benefit of the parties hereto, and that nothing in this Agreement, whether express or implied: (i) shall be treated as an amendment or other modification of any employee benefit plan, agreement or other arrangement; (ii) shall limit the right of Buyer, Seller or their respective Affiliates to amend, terminate or otherwise modify any employee benefit plan, agreement or other arrangement following the Closing Date; or (iii) shall create any third-party beneficiary or other right: (x) in any other Person, including, without limitation, any current or former director, officer, employee or independent contractor of Seller or its Affiliates or any participant in any employee benefit plan, agreement or other arrangement (or any dependent or



beneficiary thereof); or (y) to continued employment with Buyer or Seller or any of their respective Affiliates.

## **ARTICLE XI CONDITIONS PRECEDENT**

**Section 11.1 Conditions to Each Party's Obligations.** The obligations of Buyer to consummate the Transactions and the obligations of Seller to consummate the Transactions are subject to the satisfaction, or waiver if permitted by applicable Law, on and as of the Closing of the following conditions:

(a) No Law or Order. There shall not be in effect any Law or Order by a Governmental Entity of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions.

(b) Regulatory Approval. Any waiting periods applicable to the consummation of the Transactions contemplated by this Agreement under the HSR Act (including any timing agreements, understandings or commitments entered into with or made to a Governmental Entity to extend any waiting period or not close the Transactions) shall have expired or been terminated.

(c) Sale Order. The Bankruptcy Court shall have entered the Sale Order, and such order shall be in full force and effect.

**Section 11.2 Conditions to the Obligations of Buyer.** The obligations of Buyer to consummate the Transactions are subject to the satisfaction, or waiver if permitted by applicable Law, on and as of the Closing of each of the following additional conditions:

(a) Representations and Warranties. (i) The Fundamental Representations of Seller shall be true and correct in all respects as of the Closing Date, as if made at and as of such time (other than any such representations and warranties that address matters as of a particular date, which shall be true and correct in all respects as of such date) and (ii) all other representations and warranties of Seller contained in ARTICLE V (disregarding all qualifications and exceptions contained therein relating to materiality, including references to "Material Adverse Effect") shall be true and correct in all respects as of the Closing Date, as if made at and as of such time (other than any such representations and warranties that address matters as of a particular date, which shall be true and correct in all respects as of such date), except for breaches of representations and warranties that would not cause a Material Adverse Effect.

(b) Performance of Obligations of Seller. Seller shall have performed or complied in all material respects with all obligations, conditions, covenants and agreements required to be performed by it under this Agreement at or prior to the Closing.

(c) Deliveries. Seller shall have duly executed and delivered to Buyer, dated as of the Closing Date, counterparts to each of the: (i) Ancillary Agreements; (ii) Seller Officer's Certificate; (iii) Joint Written Instructions, duly executed by Seller, directing the Escrow Agent to deliver to Seller the Escrowed Funds in accordance with Section 3.1(a) and (iv) the FDA Transfer Letters.

**Section 11.3 Conditions to the Obligations of Seller.** The obligations of Seller to consummate the Transactions are subject to the satisfaction, or waiver if permitted by applicable Law, on and as of the Closing of each of the following additional conditions:

(a) Representations and Warranties. (i) The Fundamental Representations of Buyer shall be true and correct in all respects as of the Closing Date, as if made at and as of such time (other than any such representations and warranties that address matters as of a particular date, which shall be true and correct in all material respects as of such date) and (ii) all other representations and warranties of Buyer contained in ARTICLE VI (disregarding all qualifications and exceptions contained therein relating to materiality) shall be true and correct in all respects as of the Closing Date, as if made at and as of such time (other than any such representations and warranties that address matters as of a particular date, which shall be true and correct in all respects as of such date), except for breaches of representations and warranties that would not cause a material adverse effect on the ability of Buyer to consummate the Transactions.

(b) Performance of Obligations of Buyer. Buyer shall have performed or complied in all material respects with all obligations, conditions, covenants and agreements required to be performed by it under this Agreement at or prior to the Closing.

(c) Purchase Price. Buyer shall have delivered to Seller evidence of Buyer's payment to Seller of the Purchase Price (less the Escrowed Funds).

(d) Deliveries. Buyer shall have, and Buyer shall have caused its applicable Affiliates to have, duly executed and delivered to Seller, dated as of the Closing Date, counterparts to each of the: (i) Ancillary Agreements; (ii) Buyer Officer's Certificate; (iii) Joint Written Instructions, duly executed by Buyer, directing the Escrow Agent to deliver to Seller the Escrowed Funds in accordance with Section 3.1(a); and (iv) the FDA Transfer Letters.

## **ARTICLE XII TERMINATION, AMENDMENT AND WAIVER**

**Section 12.1 Termination.** Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the Transactions abandoned at any time prior to the Closing:

(a) by mutual written consent of Seller and Buyer;

(b) by Seller if any of the conditions set forth in Section 11.1 or Section 11.3 shall have become incapable of fulfillment by the Outside Date and shall not have been waived by Seller;

(c) by Buyer if any of the conditions set forth in Section 11.1 or Section 11.2 shall have become incapable of fulfillment by the Outside Date and shall not have been waived by Buyer;

(d) by Seller or Buyer if:

(i) the Closing shall not have occurred on or prior to the Outside Date;

(ii) any Law or Order by a Governmental Entity of competent jurisdiction permanently restraining, enjoining or otherwise prohibiting the consummation of Transactions shall have become final and non-appealable; or

(iii) subject to the limitations set forth in the Bidding Procedures Order and Section 7.3, (A) the Bankruptcy Court enters an order approving a higher or better competing bid or (B) the Bankruptcy Court enters an order that otherwise precludes the consummation of the Transactions on the terms and conditions set forth in this Agreement;

(e) by Seller, if Buyer shall have breached any representation or warranty or failed to perform any obligation, condition, covenant or agreement applicable to Buyer, and such breach or failure to perform: (i) would give rise to the failure of a condition set forth in Section 11.3; (ii) cannot be cured, or has not been cured within twenty (20) Business Days following Seller's delivery of written notice to Buyer of such breach or failure to perform; and (iii) has not been waived by Seller; or

(f) by Buyer, if Seller shall have breached any representation or warranty or failed to perform any obligation, condition, covenant or agreement applicable to Seller, and such breach or failure to perform: (i) would give rise to the failure of a condition set forth in Section 11.2; (ii) cannot be cured, or has not been cured within twenty (20) Business Days following Buyer's delivery of written notice to Seller of such breach or failure to perform; and (iii) has not been waived by Buyer;

provided, however, that the right to terminate this Agreement pursuant to Section 12.1(d), Section 12.1(e) or Section 12.1(f) shall not be available to any party that has breached in any material respect its obligations under this Agreement in any manner that shall have proximately contributed to the failure of the Transactions to be consummated.

## **Section 12.2 Effect of Termination and Abandonment.**

(a) In the event of termination of this Agreement and the abandonment of the Transactions pursuant to Section 12.1, this Agreement (other than as set forth in this Section 12.2, Section 13.1 and ARTICLE XIV) shall become void and of no effect with no liability on the part of any party hereto (or of any of its respective Representatives); provided, that no such termination shall relieve any party hereto from any liability for damages resulting from the Willful Breach prior to such termination by any party hereto. As used in this Agreement, "Willful Breach" means either: (i) a breach by a party of any of its obligations under this Agreement that is a consequence of an act or omission knowingly undertaken or omitted by the breaching party with the intent of causing a breach of this Agreement; or (ii) subject to the satisfaction or waiver (by the party for whom such condition may be waived) of the conditions to Closing set forth in ARTICLE XI (other than those conditions that by their terms are to be satisfied at Closing, provided that those conditions would have been satisfied if the Closing were to occur on such date), the willful or intentional failure of the breaching party to promptly consummate the Transactions in accordance

with Section 4.2 and the other transactions contemplated to be consummated at the Closing in accordance with the terms and conditions of this Agreement.

(b) Notwithstanding Section 12.2(a), in the event of a termination of this Agreement pursuant to Section 12.1(e), then Buyer and Seller shall, within two (2) Business Days after the date of such termination, deliver Joint Written Instructions to the Escrow Agent directing the Escrow Agent to deliver to Seller an amount equal to the Escrowed Funds plus any accrued investment interest thereon (less any fees or expenses owing to the Escrow Agent). Buyer acknowledges that the agreements contained in this Section 12.2(b) are an integral part of the Transactions, and that without these agreements, Seller would not have entered into this Agreement; accordingly, if Buyer fails to deliver such Joint Written Instructions or pay any amount due pursuant to this Section 12.2(b) and, in order to obtain the payment, Seller commences a Proceeding which results in a judgment against Buyer for any payment set forth in this Section 12.2(b), Buyer shall pay Seller its costs and expenses (including attorneys' fees and disbursements) in connection with such Proceeding, together with interest on such payment at the Interest Rate (for the avoidance of doubt, using the payment described in this sentence as the applicable payment) through the date such payment was actually received. Buyer agrees that Seller may seek any other remedies at Law or equity arising from Buyer's breach of this Agreement, including any remedies available pursuant to the terms of this Agreement or at Law, notwithstanding Seller's receipt of the Escrowed Funds.

(c) Notwithstanding Section 12.2(a) and subject to Section 12.2(b), in the event of a termination of this Agreement other than pursuant to Section 12.1(e), then Buyer and Seller shall, within two (2) Business Days after the date of such termination, deliver Joint Written Instructions to the Escrow Agent directing the Escrow Agent to deliver to Buyer an amount equal to the Escrowed Funds plus any accrued investment interest thereon (less any fees or expenses owing to the Escrow Agent).

(d) In the event of termination of this Agreement pursuant to Section 12.1: (A) Buyer shall return all documents and other material received from Seller relating to Seller and its Affiliates, the Products, the Transferred Assets or the Transactions, whether so obtained before or after the execution hereof, to Seller; and (B) all confidential information received by Buyer with respect to Seller and its Affiliates, the Products, the Transferred Assets or the Transactions shall be treated in accordance with the Confidentiality Agreement, and with the Confidentiality Agreement remaining in full force and effect in accordance with its terms, notwithstanding the termination of this Agreement.

### ARTICLE XIII INDEMNIFICATION

**Section 13.1 Survival.** All representations and warranties contained herein or made pursuant hereto shall not survive the Closing, and neither Seller nor Buyer shall have any liability to each other after the Closing for any breach thereof.

**Section 13.2 Indemnification by Buyer.** Buyer hereby agrees that, from and after the Closing Date, Buyer shall indemnify Seller and its Affiliates and its and their respective shareholders, managers, members, partners, directors, officers, employees, agents, Representatives,

successors, permitted assigns, heirs and legal representatives (the “Indemnified Parties” and each, an “Indemnified Party”) against, and hold them harmless from, and pay and reimburse such parties for, any Losses to the extent such Losses arise from or in connection with the following:

(a) any breach by Buyer of any of its covenants, agreements or obligations contained in ARTICLE III (*Purchase Price*) or ARTICLE IX (*Certain Other Covenants and Agreements*) of this Agreement; and

(b) all obligations in respect of or arising out of the Transferred Assets and the Products first coming into existence on and after the Closing.

### **Section 13.3 Procedure.**

(a) In order for any Person to be entitled to any indemnification provided for under this ARTICLE XIII in respect of, arising out of or involving a claim made by any Person (other than a party hereto) against an Indemnified Party (a “Third-Party Claim”), such Indemnified Party must notify the indemnifying party in writing of the Third-Party Claim within ten (10) Business Days after receipt by such Indemnified Party of written notice of the Third-Party Claim (or sooner, to the extent the nature of the Third-Party Claim requires a response in a shorter period of time); provided that failure to give such notice shall not affect the right to indemnification provided hereunder except to the extent the indemnifying party shall have been actually and materially prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the indemnifying party, as promptly as reasonably practicable following such Indemnified Party’s receipt thereof, copies of all written notices and documents (including any court papers) received by such Indemnified Party relating to the Third-Party Claim.

(b) If a Third-Party Claim is made against an Indemnified Party, the indemnifying party shall be entitled at its election and its cost to assume the defense of such Third-Party Claim with counsel selected by the indemnifying party. If the indemnifying party assumes such defense, the Indemnified Party shall nonetheless have the right to employ counsel separate from the counsel employed by the indemnifying party; provided that the indemnifying party shall not be liable to such Indemnified Party for any fees of such separate counsel with respect to the defense of such Third-Party Claim, unless the employment and reimbursement of such separate counsel is authorized by the indemnifying party in writing. If the indemnifying party does not assume such defense, and for any period during which the indemnifying party has not assumed such defense, the indemnifying party shall be liable for the reasonable fees and expenses of one single counsel (in addition to reasonable fees and expenses of local counsel required in jurisdictions not central to the Third-Party Claim) employed (and reasonably acceptable to the indemnifying party) by such Indemnified Party (which reasonable fees and expenses shall be considered Losses for purposes of this Agreement). If the indemnifying party chooses to defend a Third-Party Claim or prosecute a claim in connection therewith, each Indemnified Party shall provide all cooperation as is reasonably requested by the indemnifying party in such defense or prosecution.

(c) Notwithstanding anything to the contrary in this Section 13.3, no party may settle, compromise or discharge (and in doing so, make any reasonable admission of liability with respect to) such Third-Party Claim other than for money damages only without the prior written

consent of the other party, subject to such party paying or causing to be paid all amounts arising out of such settlement or obtaining and delivering to such other party, prior to the execution of such settlement, a general release prepared and executed by all Persons bringing such Third-Party Claim.

(d) In the event an Indemnified Party has a claim against an indemnifying party under Section 13.2 that does not involve a Third-Party Claim, such Indemnified Party shall deliver notice of such claim to the indemnifying party stating the amount of the Loss, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed to arise, within ten (10) Business Days of becoming aware of the facts or circumstances giving rise to such claim; provided that failure to give such notice shall not affect the indemnification provided hereunder except to the extent the indemnifying party shall have been actually prejudiced as a result of such failure. The Indemnified Party and the indemnifying party shall, for a period of not less than twenty (20) Business Days following receipt by the indemnifying party of the notice of such claim, negotiate, in good faith, to resolve the claim, and such Indemnified Party shall not commence Proceedings with respect to such claim prior to the end of such period.

**Section 13.4 Tax Treatment of Indemnification Payments.** Seller and Buyer agree to treat any indemnification payment made pursuant to this ARTICLE XIII as an adjustment to the Purchase Price for federal, state, local and foreign income Tax purposes.

#### **ARTICLE XIV GENERAL PROVISIONS**

**Section 14.1 Expenses.** Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the Transactions will be paid by the party incurring such costs and expenses, whether or not the Closing will have occurred.

**Section 14.2 Further Assurances and Actions.** Each of the parties hereto, upon the request of the other party hereto, whether before or after the Closing and without further consideration, will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary to effect complete consummation of the Transactions. Seller and Buyer agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be reasonably necessary in order to consummate or implement expeditiously the Transactions.

**Section 14.3 Notices.** All notices and other communications required or permitted to be given or made pursuant to this Agreement shall be in writing signed by the sender and shall be deemed duly given (a) on the date delivered, if personally delivered, (b) on the Business Day after being sent by Federal Express or another recognized overnight mail service which utilizes a written form of receipt for next day or next Business Day delivery, (c) three (3) Business Days after mailing, if mailed by U.S. postage-prepaid certified or registered mail, return receipt requested, in each case addressed to the applicable party at the address set forth below or (d) upon transmission if sent via e-mail, with an additional copy being sent promptly by Federal Express or

another recognized overnight mail service which utilizes a written form of receipt for next day or next Business Day delivery; provided that a party may change its address for receiving notice by the proper giving of notice hereunder:

If to Seller, to:

Insys Therapeutics, Inc.  
410 S. Benson Lane  
Chandler, AZ 85224  
Attention: General Counsel

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

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Attention: Frederick S. Green  
Ronit Berkovich  
Email: Frederick.Green@weil.com  
Ronit.Berkovich@weil.com

if to Buyer, to:

Chilion Group Holdings US, Inc.  
Suite 2A, 64 Jardin Dr  
Concord, Ontario, L4k 3P3f, Canada  
Attention: Brandon Kidd  
Email: [brandon.kidd@chiliongroup.com](mailto:brandon.kidd@chiliongroup.com)

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

Barnes & Thornburg LLP  
2121 N. Pearl St., Suite 700  
Dallas, Texas 75201  
Attention: John Willding  
Email: [john.willding@btlaw.com](mailto:john.willding@btlaw.com)

**Section 14.4 Headings.** The table of contents and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

**Section 14.5 Severability.** Should one or more of the provisions of this Agreement become void or unenforceable as a matter of Law, then this Agreement shall be construed as if such provision were not contained herein and the remainder of this Agreement shall be in full force and effect, and the parties hereto will use their reasonable best efforts to substitute for the invalid

or unenforceable provision a valid and enforceable provision which conforms as nearly as possible with the original intent of the parties hereto.

**Section 14.6 Counterparts.** This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other party hereto, it being understood that all parties hereto need not sign the same counterpart.

**Section 14.7 Entire Agreement; No Third-Party Beneficiaries.** This Agreement, the Ancillary Agreements and Schedules hereto and, as modified pursuant to the terms herein, the Confidentiality Agreement, constitute the entire agreement and supersede all prior agreements and understandings, both written and oral (including any letter of intent, memorandum of understanding or term sheet), between or among the parties hereto with respect to the subject matter hereof. Except as provided in ARTICLE XIII, this Agreement is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder or thereunder.

**Section 14.8 Governing Law; English Language.** This Agreement shall be governed by and construed in accordance with the Laws of the State of New York and the intellectual property Laws of the United States without giving effect to any Law that would result in the application of a different body of Law than as set forth in this Section 14.8, except to the extent that the Laws of such state are superseded by the Bankruptcy Code. This Agreement was prepared in the English language, which language shall govern the interpretation of, and any dispute regarding, the terms of this Agreement.

**Section 14.9 Jurisdiction, Venue, Service of Process; Waiver of Trial by Jury.**

(a) Without limiting Buyer's or Seller's right to appeal any order of the Bankruptcy Court: (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions; and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 14.3; provided, however, that if the Chapter 11 Cases have closed, Buyer and Seller agree to unconditionally and irrevocably submit to the exclusive jurisdiction of: (i) the Bankruptcy Court upon a motion to reopen the Chapter 11 Cases; or (ii) if the Bankruptcy Court rejects such motion, the United States District Court for the District of Delaware sitting in New Castle County and any appellate court therefrom, for the resolution of any such claim or dispute. Buyer and Seller hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Buyer and Seller hereby agree that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.



(b) Each of Buyer and Seller hereby consents to process being served by the other party hereto in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 14.3.

(c) EACH OF BUYER AND SELLER WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, MATTER OR PROCEEDING BASED UPON, ARISING OUT OF, OR RELATED TO THIS AGREEMENT, ANY PROVISION HEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 14.10 Specific Performance.** The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with its terms and that the parties hereto will be entitled to specific performance of such terms, in addition to any other remedy at Law or in equity, without the necessity of demonstrating the inadequacy of monetary damages and without the posting of a bond. No remedy referred to in this Agreement is intended to be exclusive unless explicitly stated to be so, but each shall be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under Law.

**Section 14.11 Publicity.** Neither party will make any public announcement concerning, or otherwise publicly disclose, any information with respect to the Transactions or any of the terms and conditions hereof without the prior written consent of the other party hereto, which consent will not be unreasonably withheld. Notwithstanding the foregoing, either party may make any public disclosure concerning the Transactions that in the view of such party's counsel may be required by Law, by order of the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement, or by the rules of any stock exchange on which such party's or its Affiliates' securities trade; provided, however, the party making such disclosure will provide the non-disclosing party with a copy of the intended disclosure, to the extent practicable, prior to public dissemination, and the parties hereto will coordinate with one another regarding the timing, form and content of such disclosure in a manner consistent with any such applicable Law or Bankruptcy Court requirement.

**Section 14.12 Assignment.** Until such time as any and all Purchase Price payments have been finally determined pursuant to Article III and made to Seller, Buyer shall not, without the prior written consent of Seller: (i) assign its rights or obligations under this Agreement; and (ii) cause or permit to occur a Change of Control, and a Change of Control shall constitute an event of default under this Agreement. Notwithstanding the foregoing, Seller shall be permitted at any time, without the consent of Buyer, to assign any of its rights and obligations under this Agreement, including the right to receive any portion of the Purchase Price and the right to enforce this Agreement, to any Person. Any permitted assignee or successor-in-interest will assume all obligations of its assignor under this Agreement. For the avoidance of doubt, no assignment by Buyer or its successor or permitted assign will relieve such party of its responsibility for the performance of any and all obligations hereunder. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**Section 14.13 Amendments and Waivers.** This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. By an instrument in writing, Buyer, on the one hand, or Seller, on the other hand, may waive compliance by the other

party with any term or provision of this Agreement that such other party was or is obligated to comply with or perform. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

**Section 14.14 Reasonable Best Efforts.** For purposes of this Agreement, the respective obligations to use “reasonable best efforts” of each party hereto to cause its Affiliates to take action (or to refrain from taking action) shall mean such party’s: (i) taking reasonable steps under the circumstances to enforce its contractual rights; and (ii) making reasonable requests of its Affiliates to take action (or to refrain from taking action). In no event shall “reasonable best efforts” of either party hereto require such party to commence any litigation or arbitration proceedings against its Affiliates or make any material payment (except to the extent advanced, assured or agreed in advance to be reimbursed by the other party hereto), incur any material obligation or grant any material concession.

**Section 14.15 Compliance with Law.** Each party shall perform its obligations under this Agreement in accordance with all applicable Laws. No party shall, or shall be required to, undertake any activity under or in connection with this Agreement which violates, or which it believes, in good faith, may violate, any applicable Laws.

**Section 14.16 Construction.** The parties hereto acknowledge and agree that: (a) each party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision; (b) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement; and (c) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be signed by their respective representatives thereunto duly authorized, all as of the date first written above.

**INSYS THERAPEUTICS, INC.**

By:  \_\_\_\_\_

Name: ANDREW LONG

Title: CEO

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be signed by their respective representatives thereunto duly authorized, all as of the date first written above.

**CHILION GROUP HOLDINGS US, INC.**

By: Brandon Kidd

Name: Brandon Kidd

Title: CEO