Court File No.

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ANTIBE THERAPEUTICS INC. (the "Applicant")

# APPLICATION RECORD

April 8, 2024

**Paliare Roland Rosenberg Rothstein LLP**
155 Wellington Street West 35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300

**Kenneth T. Rosenberg** (LSO# 21102H)
Tel: Tel: 416.646.4304
Email: ken.rosenberg@paliareroland.com

**Massimo Starnino** (LSO# 41048G)
Tel: 416.646.7431
Email: Max.Starnino@paliareroland.com

**Kartiga Thavaraj** (LSO# 75291D)
Tel: 416.646.6317
Email: kartiga.thavaraj@paliareroland.com

**Evan Snyder** (LSO# 82007E)
Tel: 416.646.6320
Email: evan.snyder@paliareroland.com

Lawyers for the Applicant, Antibe Therapeutics Inc.

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Applicant

## NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (choose one of the following)

[ ] In writing
[ ] In person
[ ] By telephone conference
[X] By video conference

at the following location:

330 University Avenue, 9th Floor
Toronto, ON M5G 1R7
(videoconference details to be provided)

on Tuesday, April 9th, 2024, at 9:45 a.m., (or on such other day and time as the court may direct)

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____

Local Registrar

Address of court office: 330 University Ave., 7th Floor
Toronto, ON M5G 1R7

## APPLICATION

1. The Applicant makes an application for:

(a) an initial order (the "**Proposed Initial Order**") substantially in the form included in the Application Record, inter alia:

(i) abridging and validating the time for service of this Notice of Application and the Application Record and dispensing with further service thereof;

(ii) declaring that the Applicant is a company to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies;

(iii) declaring that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") and shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**");

(iv) declaring that the Applicant shall be entitled but not required to pay all outstanding and future wages and similar entitlements after the date of this Order, incurred in the ordinary course of its Business;

(v) declaring the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation payment for goods or services actually supplied to the Applicant following the date of this Order;

(vi) appointing Deloitte Restructuring Inc. ("**Deloitte**") as court-appointed monitor in these proceedings (in such capacity, the "**Monitor**") in respect of the business and affairs of the Applicant;

(vii) staying, for an initial period of not more than ten (10) days (the "**Stay**"), all proceedings and remedies taken or that might be taken in respect of the Applicant, the Monitor or affecting the Applicant's business or any of their assets, undertakings and properties (the "**Property**"), except with the written consent of the Applicant and the Monitor, or with leave of this Court;

(viii) granting the following priority charges (the "**Charges**") on the Property, such Charges to rank in the priority set out in the Proposed Initial Order:

1) first, the Administration Charge (as defined below) up to a maximum of $250,000; and

2) second, the Directors' Charge (as defined below) up to a maximum of $150,000; and

(ix) ordering that the Charges shall rank in priority to all other claims and encumbrances on the Property.

(b) If the proposed Initial Order is granted, the Applicant intends to seek an amended and restated initial order (an "**ARIO**") within 10 days of the Initial Order being granted, for an order:

(i) extending the Stay to May 24, 2024;

(ii) increasing the amount of the Administration Charge to $500,000;

(iii) increasing the amount of the Directors Charge to $385,000;

(iv) granting such other relief as may be requested in the Applicant's further Notice of Motion; and,

(c) such further and other relief as may be requested by the Applicant and which this Honourable Court deems appropriate and just.

2. The grounds for the application are:

**Background**

(a) The Applicant is a company incorporated pursuant to the laws of Ontario;

(b) The Applicant's registered office is 15 Prince Arthur Avenue, Toronto, Ontario;

**The Business and the Insolvency Event**

(c) The Applicant is a publicly-traded clinical stage biotechnology company that develops novel pain and inflammation-reducing drugs. Antibe's objective is to leverage its proprietary hydrogen sulfide platform to develop safer pain-relief drugs (i.e., drugs that target inflammation arising from a wide range of medical conditions) (the "**Business**");

(d) Antibe has been developing its lead drug, a nonsteroidal anti-inflammatory drug ("**NSAID**") termed ATB-346 or otenaproxesul (the "**Drug**"), since 2004. The Drug represents an innovation in the class of NSAID-based compounds. It exhibits equal or greater efficacy than currently marketed NSAIDs while drastically reducing adverse GI side effects (one of the most common issues with NSAIDs);

(e) Once approved, Antibe believes the Drug can become the oral non-opioid pain reliever of choice for acute (short-term) pain, such as post-operative pain, and shows great promise for the treatment of chronic (long-term) pain, such as arthritis—this will be of significant societal value given the opioid crisis that the world is currently facing;

(f) As part of its Business, Antibe has entered into licensing arrangements with larger pharmaceutical companies whereby, among other terms, the licensees have agreed to help fund the development of the Drug in exchange for the rights to commercialize and market the Drug in the licensed territory (once developed);

(g) One such License Agreement was entered into by Antibe in February 2021 with a company called Nuance Pharma Limited ("**Nuance**") for the territory of the Greater China Region (the "**Nuance License Agreement**");

(h) The Nuance License Agreement included a non-refundable and non-creditable upfront payment of USD$20 million, which Nuance paid to Antibe at the time of the Nuance License Agreement;

(i) In January of 2022, Nuance commenced an arbitration against Antibe (the "**Arbitration**"), alleging, among other things, that Antibe had improperly failed to include certain documents (the "**Health Canada Correspondence**") in its data room, thereby inducing Nuance to enter into the Nuance License Agreement;

(j) Antibe defended Nuance's claim on the basis that the clinical results that had formed the basis for the Health Canada Correspondence had been included in the data room, rendering the Health Canada Correspondence irrelevant to Nuance's investment decision, and that Nuance had inadequately performed its due diligence;

(k) Pursuant to the terms of the Nuance License Agreement, the hearing of the Arbitration took place in May, 2023, in Singapore;

(l) On March 1, 2024, Antibe received the arbitral tribunal's award (the "**Award**");

(m) Contrary to Antibe's expectation, the Award found in favour of Nuance, ordered that the Nuance License Agreement was rescinded, and ordered that Antibe repay Nuance the USD$20 million upfront payment, plus Nuance's costs and interest. In total, the Nuance Arbitration Award ordered Antibe to pay Nuance approximately CAD$33 million;

(n) Antibe has engaged in discussions with Nuance in an attempt to agree on terms for the payment of the Award, including Antibe putting forth a good faith proposal to pay Nuance back in full;

(o) Nuance did not respond to Antibe's proposal but, on March 28, 2024, Nuance served Antibe with an application for enforcement of the Award in Ontario (the "**Enforcement Application**");

(p) Antibe is unable to pay the Award, at this time in full, having regard to its other liabilities and contingent liabilities;

(q) If pursued and completed at this time, the Enforcement Application would lead to a shut down of Antibe's business and efforts to develop the Drug. Further, the Enforcement Application appears to effectively request a liquidation of Antibe, which would not be value maximizing;

(r) The Drug has societal value, and there is a reasonable prospect that allowing Antibe to continue to engage in respect of the next phase of the Drug's development will maximize value for Antibe's creditors, including Nuance, and significant benefit social stakeholders;

**Outstanding Obligations**

(s) Antibe has current liabilities totalling CAD$40.3 million, including the following:

(i) a debt to Nuance in the approximate amount of CAD$33 million, pursuant to the Award;

(ii) trade payables in the approximate amount of CAD$6.7 million owing to various suppliers in connection with the Phase 2 Trial; and

(iii) other payables and accrued liabilities in the approximate amount of CAD$0.6 million;

(t) Additional liabilities that could crystalize in the event of the cessation of operations and liquidation include, among others, the following:

(i) contract claims in respect of the development of the Drug of up to approximately USD$5.4 million;

(ii) employee claims for severance and termination in the approximate amount of CAD$2.7 million based on Antibe's obligations under the contracts to termination pay and/or one month's pay per calendar year;

(iii) contractor claims for termination in the approximate amount of CAD$500,000, based on Antibe's obligations under the contracts to termination pay;

(iv) contingent claims by Antibe's other licensees, which are not presently quantifiable, alleging breach of their licence agreements or in tort; and

(v) a claim in respect of Antibe's lease agreement in the approximate amount of CAD$101,000;

(u) Antibe's current assets are limited to its cash position and the value of its intellectual property;

**CCAA Proceedings**

(v) As noted above, the Applicant is on the verge of an imminent liquidity crisis and has been or will shortly be unable to meet its obligations as they come due;

(w) The Applicant is requesting a stay of proceedings for an initial period of not more than 10 days (the "**Stay Period**") to be granted to provide it time to pursue its restructuring options in a stabilized environment and on notice to all stakeholders;

(x) To assist it in the identification and pursuit of its restructuring options, the Applicant has retained the services of Edward Sellers through Black Swan Advisors Inc. as its Restructuring Advisor (the "**RA**");

**Appointment of Monitor**

(y) The Applicant seeks to appoint Deloitte as the monitor (in such capacity, the "**Proposed Monitor**") in the CCAA proceedings;

(z) Deloitte is qualified, competent and has consented to act as the Monitor in these proceedings, should the Initial Order be granted;

**Administration Charge**

(aa) The Proposed Initial Order contemplates a super priority charge over its property, assets and undertaking in the initial maximum amount of $250,000 to secure the fees and disbursements of the Proposed Monitor, its counsel and counsel to the Applicant, and its RA, incurred both before and during the CCAA proceedings (the "**Administrative Charge**");

(bb) The expertise and participation of the proposed beneficiaries of the Administration Charge are crucial to the completion of the Applicant's restructuring;

(cc) The proposed Administrative Charge is proportionate with the risk of non-payment being assumed by the proposed beneficiaries having regard to the Applicant's cashflow statements;

**Directors and Officers**

(dd) To facilitate the ongoing stability of the Applicant's business during the CCAA period and the efficient implementation of these restructuring

proceedings, the Applicant requires the continued participation of its directors and officers who oversee the management of the Business and commercial activities of the Applicant;

(ee) The Applicant is concerned that those directors and officers may not continue their service in this restructuring unless the Proposed Initial Order grants the Directors' Charge (as defined below) to secure the Applicant's indemnity obligations to the directors and officers that arise post-filing;

(ff) The Applicant maintains directors' and officers' liability insurance (the "**D&O Insurance**"), which policies provide a total of up to $5 million in primary coverage;

(gg) The Proposed Initial Order contemplates the establishment of a charge in the amount of $150,000 (the "**Directors' Charge**"), which has been reviewed by the Proposed Monitor;

(hh) The benefit of the Directors' Charge will only be available to the extent that a liability is not covered by the D&O Insurance;

(ii) The Applicant is unlikely to have sufficient funds available to satisfy any contractual indemnities to the directors and officers should the directors or officers need to call upon those indemnities;

**Priority of Charges**

(jj) The proposed ranking of the Charges is as follows:

(i) First, the Administration Charge (up to a maximum of $250,000);

(ii) Second, the Directors' Charge (up to a maximum of $150,000).

**Other Grounds**

(kk) the provisions of the CCAA, including sections 3(1), 10(1),(2), 11, 11.02(1), (3), 11.03, 11.51(1), (2), 11.52(1), (2), 11.7(1), and the inherent and equitable jurisdiction of this Honourable Court;

(ll) Sections 97 and 106 of the *Courts of Justice Act, RSO 1990, c. C.43*;

(mm) Rules 2.03, 3.02, 14.05(2) 16, and 38 of the *Rules of Civil Procedure,* RRO 1990, Reg 194; and

(nn) Such further and other grounds as counsel for the Applicant may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

(a) the Affidavit of Scott Curtis, affirmed on April 8, 2024;

(b) the pre-filing report of Deloitte as proposed Monitor, dated April 8, 2024;

(c) the Consent of Deloitte to act as Monitor in these proceedings; and

(d) such further and other material as counsel may advise and this Honourable Court may permit.

**April 8, 2024**

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PROCEEDING COMMENCED AT TORONTO

## NOTICE OF APPLICATION

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Tel: 416.646.4304
Email: ken.rosenberg@paliareroland.com

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# AFFIDAVIT OF SCOTT CURTIS

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I, **Scott Curtis**, of the City of Toronto, in the Province of Ontario, **AFFIRM AND SAY:**

1. I am the Chief Operating Officer ("**COO**") of the Applicant, Antibe Therapeutics Inc. ("**Antibe**"). I have served in this capacity since 2022, and have previously served as Executive Vice President and Vice President, Corporate Development, since 2016.

2. In 2009, I graduated with an honours Bachelor of Biomedical Computing, which included studies in bioinformatics, medical informatics, computer-integrated surgery, artificial intelligence, analytical genomics and database management systems. From 2009 to 2013, I worked as an investment banking professional at Bloom Burton & Co, a

leading healthcare-focused investment dealer in Canada, and subsequently Beacon Securities Limited. In 2013, I became a Chartered Financial Analyst (CFA) charter holder and have maintained the designation since that time.

3. In 2014, I completed my Masters of Engineering in Computer Engineering, and subsequently worked as an equity research analyst conducting research on a range of issuers including in the specialty pharmaceuticals sector at Cantor Fitzgerald Canada Corp. In 2021, I completed a General Management Program at the Harvard Business School of Executive Education.

4. Through my education and career, I have obtained significant experience in financial analysis, capital raising and business development, risk management, strategic planning, implementing cost-saving strategies, supporting strategic mandates and overcoming growth hurdles.

5. Through my current role as COO of the Applicant, and through my previous roles, I am familiar with the operations, financial results and strategies of the Applicant. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

6. I am swearing this affidavit in support of an application by the Applicant for an Initial Order pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**").

***A. Overview***

7. Antibe is a clinical stage biotechnology company based in Toronto, Ontario that develops novel pain and inflammation-reducing drugs. Antibe's objective is to leverage its proprietary hydrogen sulfide platform to develop safer drugs that target inflammation arising from a wide range of medical conditions.

8. The world is currently confronting a crisis in pain management and relief, largely due to the addictive nature of opioids. Nonsteroidal anti-inflammatory drugs ("**NSAIDs**") such as ibuprofen and naproxen, as the main alternative to opioids, are employed widely for pain management but generally carry a risk of serious gastrointestinal ("**GI**") issues.

9. Antibe has been developing its lead drug, an NSAID termed ATB-346 or otenaproxesul (the "**Drug**"), since 2004. The Drug represents an innovation in the class of NSAID-based compounds and exhibits equal or greater efficacy than currently marketed NSAIDs while drastically reducing adverse GI side effects. No drug currently available appears to meet these criteria, resulting in a significant unmet medical need. Antibe believes the Drug can become the oral non-opioid of choice for acute (short-term) pain, including post-operative pain, acute musculoskeletal pain, dysmenorrhea (menstrual pain), migraine, gout and dental pain, and chronic (long-term) conditions, such as osteoarthritis, thus providing great societal benefit.

10. Prior to 2021, Antibe had been focused on developing the Drug for chronic pain. The biggest hurdle with the Drug, however, was the issue of certain liver enzyme elevations, or "**LTEs**" (as defined below at paragraph 59), that followed administration of the Drug with chronic use. Since late 2021, Antibe has made significant positive progress

with the Drug, and in significantly mitigating the LTE issue, by developing the Drug for acute use.

11. Recently however, Antibe received an adverse arbitration result in respect of a licensing deal it had entered into for the eventual sale of the Drug in China with a Hong-Kong incorporated company called Nuance Pharma Limited ("**Nuance**" and the "**Nuance License Agreement**"). The Nuance License Agreement included a non-refundable and non-creditable upfront payment of USD$20 million, which Nuance paid to Antibe at the time of the Nuance License Agreement.

12. In January of 2022, Nuance commenced an arbitration against Antibe (the "**Arbitration**"). Nuance alleged that Antibe had improperly induced Nuance to enter into the Nuance License Agreement. One of the allegations made by Nuance was that Antibe had failed to provide it with certain correspondence from Health Canada, including correspondence regarding a proposed 28-day clinical trial for the Drug in which Health Canada stated it had serious concerns regarding the potential risk of liver related adverse events in the trial (which involved the Drug's formulation for chronic pain), some intervening correspondence, and Antibe's subsequent letter withdrawing its clinical trial application (the "**Health Canada Correspondence**").

13. Antibe defended Nuance's claim on the basis that Nuance had undertaken little or no relevant due diligence, had not made any information requests that would have required Antibe to provide the Health Canada Correspondence, and that, in any event, the clinical results that had formed the basis for the Health Canada Correspondence had

been provided to Nuance, rendering the Health Canada Correspondence irrelevant to Nuance's investment decision.

14. Pursuant to the terms of the Nuance License Agreement, the hearing of the Arbitration took place in May, 2023, in Singapore.

15. On March 1, 2024, Antibe received the arbitral tribunal's award (the "**Award**"). Contrary to Antibe's expectation, the Award found that under New York law, the Health Canada Correspondence was material to Nuance's decisions to enter into the Nuance License Agreement, that Antibe had a positive obligation to produce the Health Canada Correspondence notwithstanding the absence of a request for the information by Nuance, and, therefore, that an omission of these documents in the Data Room by Antibe therefore amounted to a fraudulent misrepresentation. The tribunal ordered the rescission of the Nuance License Agreement, and ordered that Antibe repay Nuance the USD$20 million upfront payment, plus Nuance's costs and interest. In total, inclusive of costs and interest, the Award ordered Antibe to pay Nuance approximately USD$24 million and SGD$154,000 (approximately CAD$33 million at current exchange rates).

16. Antibe is unable to pay the Award, having regard to its cash accounts, other liabilities and contingent liabilities. Antibe has engaged in discussions with Nuance in an attempt to agree on terms for the payment of the Award, including Antibe putting forth a good faith proposal to pay Nuance back in full over time. Nuance did not respond to the proposal, but on March 28, 2024, Nuance served Antibe with an application for enforcement of the Award in Ontario (the "**Enforcement Application**").

17. As noted above, the progress that Antibe has made towards development of the Drug since the signing of the Nuance License Agreement and commencement of the arbitration is significant. In 2020, Antibe began working with a team of highly-specialized liver scientists to leverage proprietary software (known as "**DILIsym**") to closely study the issue of the LTEs. By the end of January 2022, Antibe determined the likely cause of the LTEs, and that LTEs were not likely to be an issue for the Drug's development for acute pain. In October 2022, Antibe completed the development of a new, faster-absorbing version of the original formulation of the Drug, tuned for acute pain (the "**New Formulation**"). In February 2023, results from DILIsym predicted, through sophisticated computer modelling and thousands of simulations, that all of Antibe's envisioned acute treatment regimens of the New Formulation would be liver safe, with virtually no incidence of LTEs. Then, in November of 2023, Antibe ran a clinical trial in which the results both validated the DILIsym model and confirmed the predicted liver safety with no observed LTEs. This was a significant development for Antibe.

18. Following up to the November 2023 clinical trial, Antibe has been undertaking work in respect of a clinical trial in the United States of America ("**US**") (the "**Phase 2 Trial**"). The Phase 2 Trial is designed to test the efficacy and safety of the Drug and the New Formulation in patients needing post-operative pain relief, and closely resembles the treatment regimens used in the November 2023 clinical trial.

19. Work on the Phase 2 Trial has been ongoing. However, on March 28, 2024, the U.S.' regulator, the Food and Drug Administration ("**FDA**"), met with Antibe and verbally advised Antibe that it was placing a hold on the Phase 2 Trial. The FDA advised Antibe that they were not yet satisfied with (a) the breadth of data provided to the FDA in respect

of the New Formulation to justify the proposed dosing level, despite the two recent clinical trials, or (b) some of the assumptions in the DILIsym model. The FDA advised that within 30 days it would be sending a letter which would contain more details of the FDA's reasons for the hold (the "**FDA Hold Letter**"), and that Antibe could provide further data and responses to the FDA's inquiries once the FDA Hold Letter had been provided.

20. While it is difficult for Antibe to respond to the FDA without seeing the specific details that will be provided in the FDA Hold Letter, I am advised by Antibe's development team, including our Chief Medical Officer ("**CMO**") Dr. Joe Stauffer, and I believe, that it is likely Antibe will have the hold lifted by the FDA with clarifying written responses and, if necessary, modest adjustments to the Phase 2 Trial design.

21. Antibe intends to continue to engage with the FDA to determine whether the reasons for the hold can be addressed such that the Phase 2 Trial can proceed. Continuing to engage with the FDA is a low-risk, high-reward endeavor: the next steps are that the FDA will provide the FDA Hold Letter, and Antibe will have a chance to respond. This will involve minimal additional financial expenditure by Antibe and a limited amount of time. Conversely, prematurely abandoning the Phase 2 Trial would be value destructive for all stakeholders of Antibe.

22. There is a significant societal value of the Drug for acute purposes, in addition to being of value to Antibe's stakeholders, including three other licensees of the commercial rights to the Drug for various regions across the globe. The global acute pain market is estimated to be worth in excess of USD$25 billion, and there is an urgent unmet need for non-opioid acute pain alternatives.

23. There is also financial value to Antibe, and its stakeholders, in Antibe continuing to engage with the FDA. The value of the Drug as an asset is diminished with the hold placed on it by the FDA. The value of Antibe's intellectual property in the Drug will increase through continuation and completion of the FDA process. Antibe's developmental team is best positioned to address the hold placed by the FDA due to their familiarity with the Drug and its clinical trial history, their prior interactions with the FDA and their work on the Phase 2 Trial.

24. Finally, a successful Phase 2 Trial will preserve and maximize value for all stakeholders, including Nuance. Antibe anticipates that a successful Phase 2 Trial will significantly enhance the value of the Drug as an asset; in general terms, completion of Phase 2 (as defined below at paragraph 60) signifies that a drug's safety and efficacy has been demonstrated and Phase 2 completion is considered to be a substantial inflection point in a drug's valuation and greatly enhances the marketability of the drug. A successful Phase 2 Trial is also expected to enhance the value of Antibe in the capital markets, and is expected to attract a broad audience of institutional and strategic investors. According to industry norms, completion of Phase 2 is also likely to set the stage for licensing and mergers and acquisitions activity with regional and multinational pharmaceutical companies.

25. Assuming Antibe can adequately address the FDA's reasons for the hold, and the Phase 2 Trial is allowed to proceed under the current or a similar design, Antibe expects it will take approximately 3 months to run the in-patient dosing portion of the trial, with follow-up blood testing to be completed 30 days after the end of in-patient testing. Key results are expected to be available within 2 to 3 days of completion. The timing and

duration of the Phase 2 Trial may change should the design of the trial be amended following Antibe's discussions with the FDA.

26. Antibe anticipates that, given a reasonably short amount of time following the successful completion of the Phase 2 Trial, Antibe will be able to raise additional financing and/or enter into additional licensing deals to permit it to pay its obligations to Nuance and other creditors in full.

27. In the circumstances, however, Antibe is insolvent and requires CCAA protection to allow Antibe breathing space so that it can restructure in a stabilized environment and maximize value for all affected stakeholders.

28. Having regard to time constraints and *Securities Act* issues related to the sharing of material non-public information, Antibe has not had an opportunity to consult broadly with its stakeholders (other than Nuance) in respect of support for the continuation of the Phase 2 Trial in the context of these proceedings. If Antibe is granted an initial ten day stay of proceedings, Antibe intends to consult with its stakeholders, together with the Monitor, to determine the extent of their support for the proposed restructuring proceedings. Antibe expects that its stakeholders generally will be supportive of Antibe's efforts to develop the Drug for acute use.

29. The requested stay of proceedings will put all stakeholders on an equal footing before this Court.

## *B. The Applicant*

### 1. Corporate Governance

30. Antibe was incorporated under the *Business Corporations Act* (Ontario) on May 5, 2009. A copy of Antibe's organizational chart is attached at **Exhibit "A".**

#### *(a) The Board of Directors*

31. Antibe's work is supported by a global network of advisors and subject matter experts covering scientific, clinical and regulatory affairs, and business development.

32. In particular, Antibe is directed by a Board of Directors (the "**Board**"), which includes experts in governance, capital markets, financial reporting and control, risk management, pharmacology, and large pharmaceutical transactions. A number of directors also have significant experience in pharmaceutical development and innovation.

33. All of the non-executive Board members are independent of Antibe.

34. Below are the names and jurisdictions of residence of the directors of Antibe as of the date of this affidavit, their offices held, the date they were first appointed to the Board and their principal occupation and positions:

| Name and Jurisdiction of Residence | Current Position and/or Office Held | Director Since | Principal Occupation |
|---|---|---|---|
| Robert E. Hoffman<br>*San Diego, California, US* | Chair of the Board | November 24, 2020 | President, CEO and Chairman, Kintara Therapeutics, Inc. |
| Daniel Legault<br>*Toronto, Ontario, Canada* | President, Chief Executive Officer, Secretary & Director | May 5, 2009 | President, Chief Executive Officer, Secretary & Director of Antibe |

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| Roderick Flower<br>*London, England, United Kingdom* | Director | February 26, 2013 | Emeritus Professor of Pharmacology at William Harvey Research Institute, Queen Mary University (London, UK) |
| Walt Macnee<br>*Toronto, Ontario, Canada* | Vice Chair & Director | February 26, 2013 | Former Vice Chairman, MasterCard Worldwide; former Chair of the Board, Antibe |
| Yung Wu<br>*Toronto, Ontario, Canada* | Director | July 18, 2016 | Former Chief Executive Officer, MaRS Discovery District |

35. Antibe has directors and officers ("**D&O**") insurance, with combined coverage of up to CAD$5 million. The D&O insurance policies provide coverage for claims against officers and directors, and related claims. The D&O policies expire June 30, 2024.

***(b) Executive Management***

36. Antibe is led by a group of executives who possess a combination of scientific expertise, business acumen, and strategic leadership. The Antibe executive team have a deep understanding of the pharmaceutical industry, including scientific and regulatory requirements and market dynamics.

37. Below are the names and positions of Antibe's executive team:

| **Name and Jurisdiction of Residence** | **Current Position and/or Office Held** | **Summary of Professional Background** |
|---|---|---|
| Daniel Legault<br>*Toronto, Ontario, Canada* | President, Chief Executive Officer, Secretary & Director of Antibe | Dan is a lawyer, former Captain in the Canadian Air Force, entrepreneur and executive with 30+ years of experience in guiding, founding and managing early- |

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| | | stage businesses, and has been CEO of Antibe since 2005. |
| Scott Curtis *Toronto, Ontario, Canada* | Chief Operating Officer, Antibe | (As noted above at paragraphs 1-5 of this affidavit.) |
| Joseph Stauffer *Sarasota, Florida, US* | Chief Medical Officer, Antibe | Joe is an anesthesiologist and clinical pain trial specialist. He has taught at Johns Hopkins University and is a former FDA Reviewer in the pain division. |
| Ana Stegic *Oakville, Ontario, Canada* | Director, Clinical Operations, Antibe | Ana is a medical doctor who has 15+ years of experience managing large clinical trials for a global clinical research organization. |
| David Vaughan *Pickering, Ontario, Canada* | Chief Development Officer, Clinical Operations, Antibe | Dave is a chemist and drug developer with 40 years of experience moving drugs through the development regulatory process for both big pharma and entrepreneurial biotech companies. |
| Alain Wilson *Toronto, Ontario, Canada* | Chief Financial Officer, Antibe | Al is a highly regarded strategy consultant and started Mercer Management Consulting (now Oliver Wyman) in Canada. |

38. In light of the current extraordinary circumstances Antibe is facing, on or about April 1, 2024, the Board passed a resolution appointing an executive committee (the "**Committee**") consisting of Robert Hoffman, Yung Wu, and Dan Legault. The Committee has assumed the decision-making authority of the office of the CEO. It is empowered to make all necessary and appropriate decisions and take action to fulfil all executive functions of Antibe, including, among other things, in respect of (a) day-to-day operations, (b) Antibe's conduct of negotiations and litigation with Nuance and the within CCAA proceedings, and (c) Antibe's interactions with the FDA.

### 2. Capital Structure and Financing for Operations

39. Having regard to its stage of development, Antibe has no sales revenue and has relied on the public securities markets and licensee investment for the purpose of financing its operations. Antibe has raised approximately CAD$124 million since its inception, including, most recently, CAD$40 million in late February 2021. This CAD$40 million was raised by Antibe approximately two weeks after it received the USD$20 million from Nuance, pursuant to the Nuance License Agreement. All funds from all funding sources, including the USD$20 million payment and the CAD$40 million, were deposited into Antibe's general purpose accounts and/or commingled.

#### *(a) Public Shareholding*

40. Antibe listed on the Toronto Stock Exchange ("**TSX**") Venture Exchange in 2013. On November 12, 2020, Antibe completed its graduation to the senior TSX and the Common Shares began trading on the TSX under the symbol "ATE".

41. Antibe's authorized share capital currently consists of an unlimited number of Common Shares without nominal or par value.

Antibe currently has approximately 53.0 million common shares issued and outstanding, which are widely held, with no shareholder holding more than 10% of the equity.

#### *(b) Licensee Investors*

42. Antibe has concluded four regional licensing deals to date, of which three remain in place. It is common, as part of fund raising for the development of a drug, to enter into licensing arrangements with larger pharmaceutical companies whereby, among other

terms, the licensees agree to help fund the development of the drug in exchange for the rights to commercialize and market the drug in the licensed territory (once developed).

43. On November 13, 2015, Antibe entered into a distribution, license and supply agreement with Knight Therapeutics Inc. ("**Knight**") for the Drug in Canada, Israel, Romania, Russia and sub-Saharan Africa (the "**Knight License Agreement**"). Knight is a Canadian public specialty pharmaceutical company based in Montréal, Québec, that focuses on acquiring or in-licensing innovative pharmaceutical products for the Canadian and select international markets. Subsequently, the rights to Romania were re-acquired and licensed to Acbel (see next paragraph).

44. On February 24, 2017, Antibe entered into a license and distribution agreement with Laboratoires Acbel SA ("**Acbel**") for the Drug in Albania, Algeria, Bulgaria, Greece, Jordan, Romania and Serbia (the "**Acbel License Agreement**"). Acbel is a pharmaceutical company with a strong sales and distribution presence in the Balkans region.

45. On September 5, 2018, Antibe entered into an exclusive licensing agreement with Kwang Dong Pharmaceutical Co., Ltd. ("**Kwang Dong**") for the development and commercialization of the Drug in South Korea (the "**Kwang Dong License Agreement**"). Kwang Dong is a leading pharmaceutical company in South Korea, with net sales in excess of US$600 million and over 500 sales representatives.

46. Each of the Knight License Agreement, the Acbel License Agreement and the Kwang Dong License Agreement provide licenses for the Drug for both chronic and acute use, as expanded upon in section C below.

47. As noted above, on February 9, 2021, Antibe licensed the Drug to Nuance for commercialization in the Greater China region, pursuant to the Nuance License Agreement. This is the agreement that was rescinded pursuant to the Award.

### 3. Employees

48. As of the date of this affidavit, Antibe has 10 employees and engages 3 of its workers as consultants/contractors, including its CFO who is a fractional officer retained on contract. Antibe's business success is dependent on certain key personnel, primarily its scientists and executives, who are essential to the existence and continuity of the business.

49. Competition for qualified employees among biotechnology industry companies is intense, and they are highly mobile. A suspension of operations, even temporarily, could result in a loss of key personnel or inability to attract and retain additional highly skilled employees, and could undermine the Antibe's business (i.e., the development of the Drug), to the prejudice of its stakeholders and society generally.

### 4. Banking Information

50. Antibe holds three bank accounts, a Canadian chequing account, a Canadian savings account and a US chequing account, at the Royal Bank of Canada, at 59 Wilson Street West, Ancaster, Ontario L9G 1N1.

51. Antibe holds one US chequing account, used to pay salaries to US domiciled employees, at RBC Bank, 8081 Arco Corporate Drive Suite 400, Raleigh, North Carolina 27617.

52. Antibe's money market funds and GICs are held at iA Private Wealth, 2200 McGill College Ave, Suite 350, Montréal H3A 3P8.

### 5. Key Suppliers

53. Antibe is currently engaged in a number of supply contracts, including:

(a) A statement of work pursuant to a master service agreement with Lotus Clinical Research, LLC ("**Lotus**"), dated December 15, 2023, to run the Phase 2 Trial, including project implementation, clinical monitoring, ethics and regulatory document management, site-setup and management, project management, safety management, data management, biostatistics and programming and preparation for the clinical study report;

(b) Contracts with Lonza Pharma & Biotech ("**Lonza Bend**") and Lonza Ltd. ("**Lonza Nansha**") for process development and clinical manufacturing of the Drug;

(c) A contract with Pantheon API, Inc. ("**Thermo-Fisher**"), dated June 8, 2023 and revised October 23, 2023, for technology transfer and process validation for the Drugs in support of late-stage clinical trials and to facilitate commercialization;

(d) Task orders with Simulations Plus, Inc., the DILIsym contractor, for various services including due diligence and consulting on the implications of DILIsym simulations for liver simulations;

(e) Its lease agreement for Antibe's offices at 15 Prince Arthur Avenue in Toronto, Ontario, dated March 1, 2015;

(f) A work order with Axiom Real-Time Metrics, Inc., dated April 8, 2022, for the establishment of a data warehouse and analytics platform for clinical studies;

(g) Two statements of work with Dalarida Drug Discovery Inc., dated April 1, 2021 and January 1, 2024 to support the drug discovery and development efforts by managing outsourced studies (although the execution of these contracts is currently paused); and

(h) Various contracts with Nucro-Technics in 2023 and 2024 for reviewing and quantifies and reporting on dose formulations analysis of the Drug.

54. Several of the above-noted suppliers play a significant role in the execution of Antibe's daily activities, including its contract manufacturing organization, contract research organization partners, and consultants Antibe uses to support regulatory and manufacturing activities. They are critical to the survival of Antibe's business and the solicitation of investment to facilitate the restructuring of Antibe on favourable terms. In particular:

(a) Lotus has been contracted by Antibe to run the Phase 2 Trial, which is critical to Antibe's achievement of Phase 2; and

(b) Lonza Bend, Lonza Nasha and Thermo Fisher are key suppliers for clinical and eventually commercial drug supply.

**6. Other Products**

55. Antibe is currently developing two drug candidates in addition to the Drug, leveraging its hydrogen sulfide platform in a number of arenas:

(a) ATB-352: a strong, non-addictive analgesic, this is a hydrogen sulfide-releasing derivative of ketoprofen, an NSAID prescribed for a range of pain indications, addressing unmet needs in a specialized pain indication (which has not yet been publicly disclosed); and

(b) In addition to its ongoing program, Antibe's emerging discovery program is developing a new molecule to target inflammatory bowel disease ("**IBD**"), Crohn's disease and ulcerative colitis. This program will be intended to address the need for a safe and more effective drug for mild-to-moderate IBD, and is aimed at delaying or displacing the use of expensive, adverse effect-prone immunomodulators, corticosteroids, and biologics. The lead and back-up molecules are modeled on the architecture of ATB-429, a hydrogen sulfide-releasing IBD drug molecule with extensive and promising animal data but diminishing patent life. The IBD market is expected to nearly double between 2019 and 2029 from USD$13 billion to USD$25 billion.

***C. The Drug and its Development***

56. The global acute pain market is estimated to be worth in excess of USD$25 billion. Its largest segment, the post-operative pain segment, is worth an estimated USD$13 billion, with opioids and NSAIDs accounting for the majority share. While opioids are known for their powerful pain-relieving properties, they are also known to be highly

addictive, and the world has been facing a resurgent opioid crisis. NSAIDs are increasingly used to treat acute pain, especially post-operative pain. However, NSAIDs have well known GI side effects, and there has been a lack of innovation in NSAIDs and other non-opioid pain-relief medications in the last 20 years.

57. In the early 2000s, Antibe's founder made a novel discovery: that hydrogen sulfide has anti-inflammatory properties and the potential to prevent the GI damage caused by NSAIDs. Antibe used this knowledge to develop the Drug, which is a hydrogen sulfide-releasing derivative of naproxen.

58. Antibe's original project was to develop the Drug for chronic (long-term) pain—including for conditions such as osteoarthritis, ankylosing spondylitis, or rheumatoid arthritis—and to obtain regulatory approval for the Drug in the US and other major pharmaceutical markets including Europe, Japan and Canada.

59. However, another serious side effect of NSAIDs is an elevation of certain kinds of liver enzymes in the blood. While the levels of liver enzymes in the blood can fluctuate for benign reasons, increases in certain liver enzymes beyond three times the upper limit of normal are commonly called "clinically significant increases" or "liver transaminase elevations" ("**LTEs**").

60. Drug development worldwide has three fairly standardized phases for human testing once a pre-clinical safety threshold is cleared. In broad terms, these are "**Phase 1**" (which encompasses studies where a small dose of the drug is given to patients), "**Phase 2**" (which confirms a drug's safety and efficacy) and "**Phase 3**" (where the drug is given to a larger number of patients to confirm safety and efficacy).

61. Between 2014 and 2021, while conducting its Phase 1 and Phase 2 studies on the Drug for chronic use, Antibe experienced some clinically significant instances of LTEs after administration of the Drug during clinical trials. The latest of these trials involved a Absorption, Metabolism and Excretion ("**AME**") study (the "**AME Study**") conducted by Antibe in Canada.

62. The following is an overview of the development and evolution of the Drug over the past four years, including 1) the AME Study and the Health Canada Correspondence, 2) the resolution of the LTEs and development of the Drug for acute use, and 3) the Phase 2 Trial and the hold placed by the FDA. While this section is quite dense, I believe the details are important to an understanding of the company's current situation. I have also included further details in an Appendix "A" to this affidavit. The statements made in this appendix are intended to form part of my evidence and are incorporated herein and I affirm the contents to be true.

### 1. The Health Canada AME Study and the Health Canada Correspondence

63. In the late fall of 2020, the COVID-19 pandemic was ongoing worldwide. Antibe realized that, as a result of the pandemic, it was unlikely to be able to start its first planned Phase 3 trial (a large, hospital-visit-oriented clinical study in the US) as scheduled. As a result, Antibe decided to conduct the AME Study.

64. The AME Study was a voluntary study and was neither a required precursor study to Phase 3 studies, nor required by the FDA or Health Canada. Instead, Antibe took the opportunity to conduct the study because COVID-19 delayed its other plans, and the AME

Study could, in the interim, help Antibe obtain a better metabolic understanding of the Drug and help identify lower effective doses of the Drug.

65. In December of 2020, Antibe filed a clinical trial application protocol for the proposed study (the "**AME Protocol**") with Health Canada. Under the Canadian drug development rules, Health Canada had 30 days to approve or reject the application, and Antibe anticipated that Health Canada might want further information about the proposed trial (as this is often the case with regulators).

66. On January 19, 2021, Health Canada sent a request to Antibe for more information, advising that it had serious concerns regarding the potential risk of liver related adverse events, given the planned 28-day duration of the proposed trial. Antibe understood that Health Canada wanted additional clinical or non-clinical data to estimate the potential for LTEs for a 28-day dosing period.

67. By that time, Antibe had done extensive pharmacokinetic ("**PK**") analyses of the Drug (which examine how a drug moves throughout the body) with respect to LTEs. In addition, Antibe had an animal study, using miniature pigs (or, mini-pigs), in progress that would provide additional data on the effects of longer-term dosing with the Drug. Antibe was confident that the PK analysis and mini-pig data would provide Health Canada with the data it needed to assess the safety of the 28 days of dosing proposed in the AME application.

68. With this in mind, Antibe responded in detail to Health Canada's request on January 21, 2021 and met with Health Canada on January 22, 2021. At that meeting, Health Canada indicated it wanted to see the results of the mini-pig study before

proceeding. As Health Canada does not accept rolling submissions (i.e., Antibe could not just provide the mini-pig data when the study was completed), Health Canada could not issue a favourable decision on the application.

69. Accordingly, Antibe agreed with Health Canada's suggestion to withdraw its application and resubmit it when it had obtained the mini-pig study data. Antibe sent a letter later that day (January 22, 2021) withdrawing the clinical trial application.

70. In March of 2021, Antibe completed the mini-pig study and submitted a pre-application package to Health Canada in respect of the AME Study. In response, Health Canada requested that Antibe consider revisions to the application. Antibe agreed to most of the proposed revisions, including the addition of a specified stop to the study if two patients exhibited LTEs at levels at 5x the upper limit of normal. As noted earlier, increases in LTEs greater than 3x the upper limit of normal are clinically significant, and it is standard in clinical trials to stop or pause the trial when appreciable numbers of patients exhibit clinically significant adverse effects. From Antibe's perspective, Health Canada's utilization of a 5x threshold was less onerous than Antibe's own threshold for pausing the study.

71. Additionally, during this time, Antibe had submitted its Investigational New Drug application ("**IND Application**") to the FDA. On March 25, 2021, the IND Application cleared so that Antibe could perform clinical studies in the US.

72. In June 2021, Health Canada approved the AME Study, and the study began in July of 2021. On July 30, 2021, the study hit the required stopping criteria and Antibe paused the study.

73. Antibe's understanding at the time of the Drug's relationship to LTEs was that there was a dosage effect which corresponded to the blood level concentrations of the Drug. Given the low doses of the Drug administered in the AME Study, Antibe had not expected any LTEs, or at least any LTEs that were greater than those associated with NSAIDs generally.

74. The AME Study was resumed in September 2021 and the report on the study was finalized. Antibe was concurrently doing its Phase 1 IND Opening Study in the US for the FDA and that study was also completed in the Fall of 2021.

75. Antibe reviewed and analyzed the data and AME Study results. It concluded that the LTEs in the AME Study only occurred in a given period after a certain exposure to the Drug. That analysis suggested that a lower cumulative dose used for a short period could be effective and safe.

**2. Development of the Drug for Acute Use and Resolution of LTEs**

76. As a result of the elevated LTEs observed in June 2021, Antibe began to focus more exclusively on developing the Drug for acute pain relief. Since the latter half of 2021, Antibe has been working with world-leading acute pain scientists to optimize treatment regimens for post-operative pain use. This included a series of brief PK and pharmacodynamic ("**PD**") studies (which study what the drug does to the body) to determine treatment regimens for the acute Phase 2 program, including the use of doses to ensure the rapid onset of pain-relief. Antibe's view was and continues to be that completion of the acute program will also provide the company with a pathway to development of the chronic program.

77. In the last few years, since its pivot to focussing on acute pain, Antibe has also achieved certain significant breakthroughs, including, most critically, in respect of the LTEs. In 2020, Antibe began to work with DILIsym, a sophisticated software model developed by a public-private partnership to predict liver safety in new drug candidates. DILIsym is frequently used in decision-making within the pharmaceutical industry, and its modeling results are increasingly included in regulatory communications and submissions. Using DILIsym, Antibe determined that the issues causing the LTEs would not occur with the Drug's development for acute use, particularly when used with specifically designed dosing regimens.

78. In October of 2022, Antibe announced the New Formulation (as described above), a faster-absorbing formulation to accelerate onset of pain relief. This also enabled treatment regimens with lower drug doses, providing an additional safety buffer (and a potential pathway to address chronic pain indications in the future).

79. In February of 2023, Antibe announced results from DILIsym which suggested that the New Formulation was liver-safe for all envisioned acute pain treatment regimens, including five-day treatment durations (including ten days post treatment follow up).

80. In October 2023, Antibe ran its first clinical study using the New Formulation. The clinical safety results matched the predicted safety determined from DILIsym modeling: no LTEs were observed.

81. In December 2023, Antibe ran twenty additional DILIsym simulations, augmented by the first human exposure data. All were found to be safe—with zero incidence of clinically significant elevated liver enzymes.

82. The results of the November 2023 clinical trial together with the simulations provide strong support for liver safety in the Phase 2 Trial. For this reason, the Drug is currently on the cusp of completion of Phase 2 of the development process.

83. Additional details on the history of Antibe's development of the Drug and of the regulatory framework for drug development can be found at Appendix "A" to this affidavit.

### 3. Phase 2 Trial and FDA Hold

84. To build on the October 2022, February 2023 and December 2023 findings, and establish human proof-of-concept in acute pain for the Drug, in late 2023, Antibe began undertaking a Phase 2 Trial in the US to test the New Formulation in patients.

85. The Phase 2 Trial design is based on one of the gold standard surgical models for acute pain, abdominoplasty (otherwise known as "tummy tuck"). The goal of the Phase 2 Trial, in simple terms, is to measure the reduction in pain at 48 hours post administration of the Drug and how quickly the Drug provides perceptible pain relief. Antibe expects that the Drug will provide potent pain relief in the first 48 hours, and will similarly deliver perceptible pain-relief in the first 60 minutes, to meet the rapid onset expectation of an acute pain drug.

86. Antibe entered into contracts with its contract research organizations to carry out the Phase 2 Trial in late 2023. Antibe then filed its clinical documentation in respect of the Phase 2 Trial in the IND on February 29, 2024, and submitted a subsequent filing with respect to chemistry and manufacturing on March 13, 2024. Antibe planned to start screening and in-patient dosing in April of 2024.

87. On March 28, 2024, the FDA met with Antibe via teleconference and advised Antibe that it was placing a hold on the Phase 2 Trial pending satisfaction of questions surrounding the data and information to support the proposed dosing in the trial. Unlike with Health Canada, no formal approval is provided by the FDA to proceed with a clinical trial. Rather, the FDA relies on its ability to place a hold on a clinical trial at any time to oversee the administration of trials.

88. I am advised by Daniel Solorio, Antibe's lead regulatory consultant, and believe, that in the meeting with Antibe, the FDA advised that:

(a) They felt that the existing non-clinical data did not demonstrate an adequate safety margin given the initial clinical dose that Antibe planned to use. However, the FDA further advised that it uses a conservative estimate for potential exposure, and that if Antibe could show that the actual exposure would be lower, it could submit this information to the FDA in response to the forthcoming FDA Hold Letter; and

(b) They believed they did not have sufficient data to support some of the assumptions within the DILIsym model, and felt that there was not enough data provided by Antibe to justify those assumptions.

89. The FDA then advised that the FDA Hold Letter, which would provide more detail on the above and on the FDA's reasoning and analysis, would be forthcoming within 30 days. The FDA then indicated that they would be willing to schedule a follow-up teleconference if Antibe had questions or needed any further clarity around any of the items in the FDA Hold Letter.

90. On April 1, 2024, Antibe issued a press release advising that the FDA had placed a hold on the Phase 2 Trial.

91. At this juncture, without the benefit of the FDA Hold Letter, Antibe is not yet in a position to fully understand or respond to the FDA's advice. It is the collective view of Antibe's development team that there is a reasonable probability that we can address the FDA's questions with data that is already in existence but not yet provided to the FDA, and without the need to generate additional data.

92. Specifically, Antibe has existing animal data with the New Formulation that should provide comfort in the safety margin behind the proposed doses in the Phase 2 Trial. Additionally, the DILIsym model reflects years of intensive research, including thousands of simulations in both healthy and liver-compromised subjects, that support its assumptions and generalized model, and a comprehensive explanation to the FDA (which Antibe plans to do) should sufficiently address the FDA's questions.

93. Antibe is also prepared, if needed, to make adjustments to the Phase 2 Trial's design that would provide sufficient comfort to the FDA to allow Antibe to proceed, while still providing for a trial that would confirm liver safety, provide good indications of effectiveness of the Drug in patients and possibly determine the optimal dosing regimen.

94. The regulatory process with the FDA can be iterative, and at this juncture, Antibe does not know what a final design for the Phase 2 Trial acceptable to the FDA will look like. However, using Antibe's current Phase 2 Trial design, I anticipate that enrollment can be completed within 3 months, with the final follow-up patient visits ending 30 days

following the in-patient dosing, and headline results being made available 2-3 days after the completion of the study.

95. If the Phase 2 Trial is successful, this will be a significant inflection point in terms of the marketability of the Drug and for the valuation of Antibe. Completion of Phase 2 is a significant accomplishment in many jurisdictions—once a drug reaches the end of Phase 2 of its development, the drug's safety and efficacy has been firmly established, which means its likelihood of being approved increases significantly.

96. It is further worth noting that the Phase 2 Trial was designed to be "Phase 3 quality" and to demonstrate compelling value upon success (with a sample size that is nearing what would be considered a Phase 3 trial). Although, as noted above, the final design of the Phase 2 Trial remains to be determined, it remains the case that the Drug has undergone an extensive history of clinical trials and testing, including extensive prior clinical testing for chronic pain. At this juncture, in addition to the recent advancements outlined above, the Drug has already been administered to over 700 subjects (in excess of 8,000 days of a person being on the Drug), with efficacy firmly established in a large Phase 2B dose-ranging efficacy trial for osteoarthritis pain (involving 384 patients), and exceptional GI safety compared to naproxen demonstrated in another large Phase 2B trial (involving 244 subjects). Further information on the history of these trials can be found in Appendix "A" to this affidavit. As such, apart from the advice received from the FDA, the risk profile of the Drug, entering into the current Phase 2 Trial, is in many ways far less than that of a typical drug entering a Phase 2 clinical trial.

97. This further amplifies the value creation and marketability that can be expected upon a positive outcome in the Phase 2 Trial, should it be allowed to proceed. I am advised by Antibe's investment bankers, and I believe, that upon success in the upcoming Phase 2 Trial that Antibe will likely be successful in raising additional capital, as it has done in the past (having previously raised approximately CAD$124 million), to fund subsequent activities. I am further advised, and believe, that this view is supported by countless precedents in the industry. Further information on marketability after Phase 2 can be found in Appendix "A" to this affidavit.

98. Given the above, allowing Antibe to continue to engage with the FDA in respect of the Phase 2 Trial is critical to the survival of Antibe's business and the preservation and maximization of value for Antibe's stakeholders generally. Essentially all of the CAD$124 million that Antibe has raised so far has been invested in the Drug to date.

### *D. The Insolvency Event*

#### 1. The Nuance License Agreement and the Arbitration

99. In the Fall of 2020, Antibe was approached by a representative from CBC Group, an investment firm based out of Singapore that is focused on investment opportunities in China in the health care field. CBC Group is considered the largest healthcare-focused investment firm in Asia.

100. CBC Group introduced Antibe to one of its portfolio companies, Nuance, who wanted to develop, licence, and commercialize drugs in the Greater China Region. Nuance is a sophisticated biopharmaceutical company that has expertise in licensing, developing and commercializing drugs. It appears from my review of the documentary

record that, in the Fall of 2020, Nuance was considering an early IPO, and was also actively looking for drugs to add to its pipeline, including in respect of post-operative pain.

101. In December of 2020, Antibe and Nuance had a call, prior to which Antibe sent Nuance a presentation (the "**Corporate Presentation**") which provided, at a very high level, information regarding Antibe, the Drug, and other drugs that Antibe was developing. The Corporate Presentation indicated that the Drug was intended to be developed for acute and chronic pain conditions. Later that month, Nuance sent Antibe a draft term sheet and deal proposal. As of that date, the only information that Antibe had provided to Nuance about the Drug was the information in the Corporate Presentation. However, in the draft term sheet, Nuance offered Antibe an upfront payment of USD$20 million, milestone payments of USD$70 million and an 8% royalty.

102. After the term sheet was signed on January 5, 2021, Nuance continued to press Antibe for a quick licensing deal. In fact, Nuance indicated that it was committed to concluding the agreement before the Lunar New Year break (i.e., late January 2021).

103. Given the complexities associated with drug development and licensing, it is usual for a party interested in investing in a drug, such as Nuance, to enter into a lengthy period of due diligence so it can fully evaluate the prospects of the drug. The speed with which Nuance wanted to move surprised Antibe. However, Antibe was sensitive to the fact that Nuance had made a commercial decision to expedite the deal.

104. As such, Antibe worked on an "all-hands-on-deck" basis to ready the documents it anticipated Nuance would request for its due diligence. By late January 2021, Antibe had set up a data room using the product ShareVault (the "**Data Room**"). By January 25,

2021, Antibe had populated the Data Room, on its own initiative, with a base load of documents—approximately 566 documents (consisting of about 23,000 pages) regarding the Drug—based off of a data room it had used for previous deals, and supplemented by Antibe. These primarily consisted of a complete package of the scientific, non-clinical and clinical reports and associated documents, the materials provided to the FDA in advance of Antibe's pre-IND meeting with the FDA, as well as some correspondence with Health Canada regarding previous completed clinical studies. Most importantly, the Data Room contained every clinical and non-clinical report that Antibe had on the Drug. Essentially, the non-clinical and clinical reports provide a complete picture of a drug. They are the primary documents that regulators and pharmacy executives rely on when assessing a drug's development and risks. The documents contained in the Data Room and their organization are described in a ShareVault index.

105. At the same time, in late January 2021, Antibe's exchanges with Health Canada were ongoing, producing the Health Canada Correspondence. At the time, Antibe did not consider including the Health Canada Correspondence in the Data Room, in part because (i) the LTE issues on which Health Canada based its communications were widely covered in the clinical documents in the Data Room, (ii) Antibe's withdrawal of its application did not constitute a material change or adverse event that Antibe needed to report because Health Canada had not made any decision on the merits of the application and had invited Antibe to re-submit its application following the completion of the mini-pig study, (iii) it is common for regulators to make such inquiries and provide such feedback, and (iv) Antibe considered the Health Canada questions easily answered (and they were

in fact easily answered, and Antibe subsequently received approval to start the study, as outlined above).

106. To Antibe's surprise, the Nuance team requested virtually no materials for due diligence. Nuance did not request any meetings with key Antibe personnel to ask questions and obtain further information, or ask for many documents and categories of documents that are standard in due diligence. Critically, Nuance never asked for all of Antibe's regulatory communications, or for Antibe's correspondence with the FDA or with Health Canada. Nuance asked only a few questions in relation to the Drug and the documents in the Data Room and then advised it was prepared to enter into the agreement.

107. On February 9, 2021, the parties entered into the Nuance License Agreement. The "field" of the Nuance License Agreement, which provides the indications for which the Drug was being licensed, is defined as all human disease conditions appropriate for NSAID use, which includes use for both acute and chronic pain.

108. Pursuant to the Nuance License Agreement, following its execution, the parties began to make plans for the development of the Drug in the Greater China region. At this juncture, when Antibe noted that Nuance seemed to lack knowledge of the Drug's development to date, a committee was formed to assist Nuance in identifying the information it needed to develop its plan.

109. At the same time, as described above, Antibe was undertaking the AME Study in Canada. Then, unexpectedly, in July 2021, the pause threshold in the AME Study was hit, and Antibe announced it was pausing the study. Antibe advised Nuance of this right

away. Based on my review of the transcripts of evidence given in the course of the Arbitration, it appears to me that neither Nuance's CMO nor other Nuance personnel were aware that the LTEs observed in the Drug's clinical studies were a risk and did not recognize that the LTEs were a cause for concern.

110. Shortly after, Nuance unilaterally announced that it was terminating the License Agreement. A few months later, in January of 2022, Nuance commenced the Arbitration against Antibe.

111. Through its preparation for and defence of the Arbitration, Antibe concluded that Nuance had negotiated and signed the License Agreement, in which it offered a deal of USD$100 million and an upfront fee of USD$20 million plus milestone payments, without engaging in any significant due diligence. I say this because it appears Nuance only started reviewing clinical documents days before signing the License Agreement, and it only spent a handful of hours reviewing a small number of the hundreds of documents available to it.

112. The Data Room index shows that there were approximately 566 documents (consisting of about 23,000 pages) in the Data Room. The Data Room reports show: (i) Nuance representatives only spent 31 hours in the Data Room and looked at approximately 10% of the documents; (ii) the CMO of Nuance only reviewed the first few pages (the synopsis) of certain key documents in the Data Room, including the Phase 2B Effectiveness Study, and (iii) the Nuance employee in charge of regulatory issues spent less than 30 minutes reviewing correspondence between Health Canada and Antibe.

113. Pursuant to the Nuance License Agreement, the governing law for any dispute between the parties was New York law, and the seat of the arbitration was Singapore. The Arbitration was held in Singapore between May 8 and May 12, 2023.

114. At the close of the hearing, the arbitral tribunal ordered that the parties exchange closing pleadings simultaneously, on July 6, 2023. Subsequent to Antibe's delivery of its closing pleadings, the arbitral tribunal rejected Antibe's request for oral closing submissions.

### 2. The Award and Subsequent Correspondence with Nuance

115. On March 1, 2024, the parties received the Award, dated February 27, 2024. The Award is attached as **Exhibit "B".**

116. Notwithstanding evidence to the contrary, the arbitral tribunal found that under New York law the Health Canada Correspondence was material to Nuance's decision to enter into the Nuance License Agreement. The tribunal also found that therefore an omission of these documents in the Data Room by Antibe amounted to a fraudulent misrepresentation, despite the fact that Nuance had asked Antibe only a few questions about the safety or efficacy of the drug (on which it was spending a hundred million dollars), and had only requested a discrete set of regulatory communications. Nuance never requested all of Antibe's regulatory communications, or any correspondence between Health Canada and Antibe or any correspondence between the FDA and Antibe. Regardless, the Award ordered Antibe to repay the USD$20 million non-creditable upfront payment, costs and interest. In the aggregate, the award amounted to approximately CAD$33 million in total.

117. On March 1, 2024, counsel for Nuance wrote to counsel for Antibe demanding payment of the amounts in the Award within 7 days, or it would commence proceedings for the enforcement of the Award.

118. On March 9, 2024, counsel for Antibe wrote to counsel for Nuance and advised Nuance that Antibe was considering its letter and would respond shortly.

119. On March 13, 2024, counsel for Nuance advised that unless payment was made by March 15, 2024, it would take steps to commence enforcement action.

120. That same day, Antibe's CEO sent an email to the CEO of Nuance to set up a meeting to discuss how Antibe could potentially satisfy the Award while still being able to complete the Phase 2 Trial in order to preserve and maximize value for all stakeholders.

121. On March 17, 2024, an initial meeting took place between Nuance and Antibe, including Antibe's investment banker and Restructuring Advisor ("**RA**", as described in greater detail at paragraph 148 below), to discuss how Antibe might satisfy the Award. On March 19, 2024, Antibe made a detailed payment proposal to Nuance through its RA. On March 22, 2024, Antibe's RA followed up with Nuance.

122. On March 24, 2024, Nuance's CEO responded advising that the Antibe proposal had been sent to Nuance's board of directors and that it would provide an official response after the board met that week. Nuance stated that it expected that Antibe would not initiate the Phase 2 Trial until they had made a final decision. On March 25, 2024, Antibe's RA responded reiterating that Antibe had already made significant commitments related to the Phase 2 Trial and that aspects of the trial were already underway.

123. On March 26, 2024, Nuance advised that while they were considering Antibe's proposal, Antibe should not continue its spending on the Phase 2 Trial, and that in the circumstances, Antibe had left Nuance with no option to proceed with the enforcement of the Award.

124. On March 28, 2024, Antibe's counsel received notice of an application to the Ontario Superior Court of Justice (Commercial List) from counsel to Nuance in respect of the enforcement of the Award. In the Enforcement Application, Nuance requests an order appointing a receiver of Antibe's assets. Nuance also states, among other things, that Antibe should not be allowed to use "Nuance's remaining investment" to test a version of the Drug that can only be used to address acute pain, stating that this is because this is not the type of drug Nuance agreed to finance under the License Agreement.

125. Nuance never substantively responded to Antibe's payment proposal.

126. On April 8, 2024, Antibe received Nuance's aide memoire in preparing for a hearing of its Enforcement Application scheduled for April 9, 2024, which states that Nuance's claim is "effectively in the nature of a trust claim". However, as noted above, all monies that were received by Antibe from investors, including monies that were received from Nuance, were deposited into Antibe's general-purpose operating accounts, and, after receipt of the USD$20 million, Antibe subsequently raised CAD$40 million through the public markets. Antibe has a current cash balance of CAD$19.6 million.

### 3. A Liquidation of Antibe would be Value Destroying

127. It appears to me that Nuance is seeking a receivership. Nuance is also contemplating that a receiver would not extend further funds in respect of the Phase 2

Trial. My interpretation of these statements is that Nuance's ultimate goal is to liquidate Antibe through the receivership; in seeking a receivership and also advising that it does not want the Phase 2 Trial or acute development to continue with what it describes as "its investment", Nuance is, in effect, asking for a liquidation.

128. A liquidation is not value maximizing and in fact would be value destroying for the company. If Antibe is liquidated, the number of aggregate claims against the company will be increased, creditors' recovery will be limited to the cash on hand, the value of the Drug in development will be lost and the potential societal benefits of the Drug will be squandered. Antibe has obligations to stakeholders beyond Nuance. The development of the Drug for acute purposes through a successful Phase 2 Trial will bring great value to Antibe's other stakeholders and societally, and is anticipated to facilitate repayment of the Award, in full.

129. As noted above, the Drug is not a marketable asset while the clinical hold imposed by the FDA remains in place.

130. I perceive a significant risk of departure of key personnel in the event a receiver is appointed to take control of Antibe—especially when liquidation is being telegraphed as Nuance's motivation in bringing its proceedings. In my view, Antibe's current development team is best positioned to review the FDA Hold Letter and to work with the FDA to address and resolve the issues outlined in that letter, with a view to ultimately removing the hold.

***E. Financial Information***

**1. Assets**

131. Based on the Unaudited Condensed Interim Consolidated Financial Statements for the three and nine months ended December 31, 2023 and 2022, Antibe had total current assets with a net book value of approximately CAD$28 million as of December 31, 2023 comprised of, among other things:

(a) Cash and cash equivalents of approximately CAD$11,339,000;

(b) Term deposits of approximately CAD$13,567,000;

(c) Other receivables of approximately CAD$1,546,000; and

(d) Prepaid expenses of approximately CAD$1,643,000.

132. The Unaudited Condensed Interim Consolidated Financial Statements For the Three and Nine Months ended December 31, 2023 and 2022 are attached as **Exhibit "C".**

133. The remainder of Antibe's Financial Statements that were prepared in 2023, the Unaudited Condensed Interim Consolidated Financial Statements for the Three and Six Months Ended September 30, 2023 And 2022, Unaudited Condensed Interim Consolidated Financial Statements for the Three Months Ended June 30, 2023 and 2022, Consolidated Financial Statements March 31, 2023 and 2022, and the Unaudited Condensed Interim Consolidated Financial Statements for the Three And Nine Months Ended December 31, 2022 And 2021, are attached as **Exhibit "D".**

134. Presently, Antibe has a current cash balance of CAD$19.6 million, as outlined in its cash flow forecast, detailed below. Again, although in the Enforcement Application, Nuance is characterizing Antibe's current cash balance as Nuance's "monies/investment", these funds are held in a general operating account. Antibe also raised an additional CAD$40 million through the public markets in February 2021, shortly after the funding provided by Nuance was received.

135. In November 2022, Antibe sold its shares in a corporation, Citagenix Inc. ("**Citagenix**"), to another company, Hansamed Limited ("**Hansamed**"), pursuant to a share purchase agreement (the "**Citagenix Agreement**"). Pursuant to the Citagenix Agreement, Antibe expects to receive approximately CAD$1.75 million from Hansamed over the next two years, with two payments of CAD$875,000 owed to Antibe in each of November 2024 and November 2025.

**2. Liabilities**

136. Based on the Unaudited Condensed Interim Consolidated Financial Statements For the Three and Nine Months ended December 31, 2023 and 2022, Antibe had total current liabilities of approximately CAD$2.7 million as of December 31, 2023 comprised of, among other things, accounts payable and accrued liabilities.

137. Presently, Antibe has current liabilities totalling CAD$40.3 million, including the following:

(a) a debt to Nuance in the approximate amount of CAD$33 million, pursuant to the Award (discussed below);

(b) trade payables in the approximate amount of CAD$6.7 million owing to various suppliers in connection with the Phase 2 Trial; and

(c) other payables and accrued liabilities in the approximate amount of CAD$0.6 million.

138. Additional liabilities that could crystalize in the event of the cessation of operations and liquidation include, among others, the following:

(a) contract claims in respect of the Phase 2 Trial of up to approximately USD$5.4 million based on the amounts to be paid under the contracts;

(b) employee claims for severance and termination in the approximate amount of CAD$2.7 million based on Antibe's obligations under the contracts to termination pay and/or one month's pay per calendar year;

(c) contractor claims for termination in the approximate amount of CAD$500,000, based on Antibe's obligations under the contracts to termination pay;

(d) contingent claims for damages by Knight, Acbel or Kwang Dong relating to the cessation of development of the Drug, alleging breaches of their licence agreements or express or implied obligations thereunder, or in tort, which I am not in a position to quantify at this time; and

(e) a claim in respect of Antibe's lease agreement in the approximate amount of approximately CAD$101,000.

139. Further, under the terms of the Citagenix Agreement, Antibe agreed to indemnify Hansamed in respect of an arbitration proceeding that is currently ongoing in Canada relating to Citagenix's sales arrangements with a distributor based in Jordan. The hearing of the merits of that case has concluded and a hearing on the assessment of damages is scheduled for December 2024. The quantum of Antibe's outstanding liability to Hansamed in respect of this litigation is not yet quantified.

140. All of the foregoing debt is unsecured.

### *F. Current Financial Position*

141. Antibe is presently unable to pay the Award along with its other current liabilities.

142. If Antibe's assets were liquidated under judicial process in their present state, I do not expect that the proceeds would be sufficient to allow Antibe to pay the Award and its other debts.

### *G. Proposed CCAA Proceedings*

#### 1. Stay of Proceedings

143. The proposed draft initial order (the "**Initial Order**") provides for a stay of all proceedings against or in respect of the Applicant or the Monitor or affecting the Business or Property (as defined in the proposed Initial Order).

144. Antibe believes that it is in the best interest of Antibe and its stakeholders for Antibe to have the time and breathing room required to receive the FDA Hold Letter, determine whether the reasons for the hold can be adequately addressed and to determine the appropriate next steps to maximize value for all stakeholders. A stay of proceedings will also put all creditors and contingent creditors on an equal footing.

145. While the stay is in place, Antibe's intention is to: (a) seek to understand and address the questions raised by the FDA so as to have the hold lifted; (b) subject to addressing the FDA's questions and subject to further court approval, complete the Phase 2 Trial with a view to maximizing value for its stakeholders, including Nuance, while preserving the societal benefit of the work done by Antibe to date; and, (c) consult with creditors and other stakeholders to determine their interests, including in respect of a CCAA plan of compromise or arrangement or other strategic transaction.

### 2. Appointment of Monitor

146. The Applicant is seeking the appointment of Deloitte Restructuring Inc. ("**Deloitte**" or the "**Monitor**") as the proposed CCAA monitor in these proceedings. The consent of Deloitte to act as the Monitor is attached as **Exhibit "E".**

147. Deloitte has been acting as financial advisor to the Applicant pursuant to an engagement letter between Deloitte and Antibe executed March 12, 2024 and, accordingly, is familiar with its business and operations, certain of its personnel, the key issues and the key stakeholders in these CCAA Proceedings.

### 3. Appointment of Restructuring Advisor

148. Pursuant to the engagement letter dated March 17, 2024, with effect as of March 6, 2024 (the "**RA Engagement Letter**"), Antibe has engaged Edward Sellers through Black Swan Advisors Inc. ("**Black Swan**") to act as its restructuring advisor ("**RA**") and to provide certain advisory and consulting services to Antibe. A copy of the RA Engagement Letter is attached as **Exhibit "F".**

149. The Initial Order provides for the approval of the RA Engagement Letter. The services to be provided by the RA include, if and to the extent requested by Antibe, among other things:

(a) Advising Antibe regarding strategic options and alternatives available to Antibe to address its capital, liquidity, operations, or business affairs in the current circumstances (the "**Strategic Review**").

(b) Advising Antibe with activities related to the Strategic Review, including but not limited to cash management, value preservation, stakeholder engagement and communications.

(c) Advising Antibe in contingency planning and preparation ("**Contingency Planning**") in connection with any stay, postponement, moratorium, compromise or reduction of payment or performance of any obligation, or to arrange, re-organize, restructure, or otherwise address any of its capital, liquidity, operations, or business affairs ("**Restructuring**").

(d) Advising Antibe in preparing to commence or defend any proceedings related to Contingency Planning or a Restructuring ("**Restructuring Proceedings**").

(e) Advising Antibe regarding negotiations and processes related to the conduct of any Restructuring Proceedings, including, but not limited to the development of a plan for any Restructuring ("**Restructuring Plan**") and any related implementation processes, such as a Sale and Investment

Solicitation Process (or "**SISP**") relating to some or all of Antibe, its property and its business.

(f) Participating in meetings and negotiations with Antibe's advisors, external stakeholders and interested parties, including but not limited to existing creditors, potential investors and financiers, their respective representatives and agents, and others related to the Strategic Review, Contingency Planning, Restructuring Proceedings, Restructuring and any other matters related to the Advisory Services (as defined in the RA Engagement Letter).

150. The RA Engagement Letter provides that Black Swan will be paid a fixed hourly rate in respect of the provision of the RA's services. The RA Engagement Letter does not provide any success, completion or other contingent fee.

151. I believe that the RA's engagement is appropriate as: (i) the RA is very experienced in restructuring proceedings of this nature; and (ii) the experience and expertise of the RA will be beneficial to Antibe and its stakeholders in achieving a positive outcome in these proceedings.

**4. Administration Charge**

152. The Initial Order provides for a Court-ordered charge over the assets, property and undertaking of the Applicant (the "**Administration Charge**") in favour of the Monitor, the RA, legal counsel to the Monitor and legal counsel to the Applicant in respect of their fees and disbursements incurred at their standard rates and charges, in order to ensure the active involvement and assistance of such persons during the CCAA proceedings.

153. The proposed Administration Charge is in an aggregate amount of $250,000. The amount of the proposed Administration Charge has been reviewed with the Monitor.

154. If the proposed Initial Order is granted, the Applicant intends to seek an amended and restated initial order (an "**ARIO**") within 10 days of the Initial Order being granted, increasing the amount of the Administration Charge to $500,000. The amount of the proposed increase has been reviewed with the Monitor.

### 5. Directors and Officers Indemnity and Charge

155. To facilitate the ongoing stability of the Applicant's business during the CCAA period and the efficient implementation of these restructuring proceedings, the directors and officers of Antibe will be actively involved in overseeing and directing, among other things, the operation of the business during the CCAA proceedings and efforts to resolve Antibe's current financial situation. Antibe requires the continued participation of its directors and officers who oversee the management of the business and its commercial activities.

156. Antibe currently has directors and officers insurance subject to a total limit of CAD$5 million, However, this insurance expires in June 2024, and contains exclusions and limitations to the coverage provided.

157. There is a potential for there to be insufficient coverage in respect of the potential director and officer liabilities, or that gaps may remain in the coverage of the directors and officers over the long term notwithstanding the existence of the D&O insurance, or that Antibe may not be able to renew its coverage or obtain new coverage upon expiry.

158. The directors and officers of Antibe, the majority of whom are wholly independent of Antibe, have expressed their desire for certainty with respect to potential personal liabilities if they continue in their current capacities. Antibe requires the active and committed involvement of its directors and senior officers to operate its business.

159. Accordingly, the Initial Order provides for a Court-ordered charge over the assets, property and undertaking of the Applicant (the "**Directors' Charge**") to indemnify the directors and officers of the Applicant in respect of liabilities that they may incur during the CCAA proceedings in their capacities as directors and officers. The proposed Directors' Charge for the proposed initial stay period is in an aggregate amount of CAD$150,000. The amount of the proposed Directors' Charge has been reviewed with the Monitor. I am concerned that the directors and officers will not continue to act without the benefit of the Directors' Charge.

160. If the proposed Initial Order is granted, the Applicant intends to seek, in the ARIO, an increase in the amount of the Directors Charge to $385,000. The amount of the proposed increase has been reviewed with the Monitor.

**6. Priorities**

161. The Applicant believes that the amounts of the Administration Charge and the Directors' Charge (collectively, the "**Charges**") are appropriate in the circumstances.

162. It is contemplated that the priorities of the Charges will be as follows:

(a) First – the Administration Charge;

(b) Second – the Directors' Charge;

163. The Initial Order sought by the Applicant provides for the Charges to rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, (collectively, the "**Encumbrances**"), other than certain specified exceptions. Antibe does not have any secured debt.

### 7. Cashflow Forecast

164. As set out in the statement of projected cash flows of Antibe attached hereto as **Exhibit "G"** (the "**Cash Flow Forecast**"), the current cash balance of Antibe is approximately CAD$19.6 million.

165. Antibe's principal use of cash during these proceedings will consist of the costs associated with the operation of the business including employee compensation, procurement and other supplier obligations and professional fees and disbursements in connection with these CCAA proceedings and related matters. As the Phase 2 Trial is on hold, Antibe's operations will for the time being be focussed on efforts to address the FDA's reasons for issuing the FDA Hold Letter.

166. As the Cash Flow Forecast indicates, the business is projected to have sufficient cash over the forecasted period to enable Antibe to meet its day-to-day obligations for the stay period sought in this application and during the CCAA proceedings. As noted above, engagement with the FDA is not expected to consume significant financial resources.

## *H. CONCLUSION*

167. Prior to receiving the Award, Antibe operated a business that was experiencing operational growth and expanding into new markets and product segments. Antibe was not a party to any material litigation.

168. Solely as a result of the Award, Antibe has been rendered insolvent, but would have material value for shareholders, including Nuance, if the Phase 2 Trial delivers the results that Antibe reasonably expects.

169. Antibe seeks CCAA protection at this time to protect the value of its business for the benefit of all stakeholders. The requested relief will provide Antibe with an opportunity to receive the FDA Hold Letter, determine whether the reasons for the hold can be adequately addressed and, if so, consult with its stakeholders and return to court for direction in respect of the appropriate next steps to be taken to maximize value for all stakeholders.

170. The immediate relief being requested is in the best interests of the Applicant and its stakeholders, including Nuance. The relief sought is limited to relief that is reasonably necessary for the continued operation of Antibe in the ordinary course of business during the initial 10-day period.

**AFFIRMED** remotely by Scott Curtis at the City of Toronto, in the Province of Ontario, before me on this 8th day of April, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

Dillon Gohil

Dillon Gohil, a Commissioner, etc., Province of Ontario, while a Student-at-Law
Expires April 17, 2026

Scott Curtis

**SCOTT CURTIS**

## *I. APPENDIX "A" BACKGROUND ON THE DEVELOPMENT OF THE DRUG*

### 1. Opioid Crisis and the Need for Novel Non-Addictive Pain Medications

1. The world is facing a resurgent opioid crisis. While opioids are known for their powerful pain-relieving properties, they also possess a high potential for addiction. Opioids' mechanism for interacting with the brain can lead to tolerance, where individuals require higher doses over time to achieve the same effect, and even short-term use has the potential to induce dependency. Misuse or overuse of opioids can result in adverse respiratory effects, coma, and death.

2. The world is facing a resurgent opioid crisis. While opioids are known for their powerful pain-relieving properties, they also possess a high potential for addiction. Opioids' mechanism for interacting with the brain can lead to tolerance, where individuals require higher doses over time to achieve the same effect, and even short-term use has the potential to induce dependency. Misuse or overuse of opioids can result in adverse respiratory effects, coma, and death.

3. This issue was emphasized in 2022 by new draft guidance from the US Food and Drug Administration ("**FDA**"), which highlighted the urgent need for new non-opioid pain medications. As such, in North America, prescribers, patients, payors and policymakers have turned with urgency toward non-addictive pain-relief alternatives.

4. The global acute pain market is estimated to be worth in excess of USD$25 billion. Its largest segment, the post-operative pain segment, is worth USD$13 billion, with opioids and NSAIDs accounting for the majority share. In the US alone, there are 76

million surgical procedures annually and more than two million people may become persistent opioid users each year.

**2. NSAIDs and GI Safety**

5. NSAIDs are one of the largest classes of drugs worldwide, and the best alternative to opioids for pain relief. NSAIDs are increasingly used to treat acute pain, especially post-operative pain, and are the only category of medications suitable for the transition to home recovery.

6. However, NSAIDs have well-known and serious adverse side effects, including that they can cause GI ulcers and bleeding, especially at the higher doses often employed for acute pain. In severe cases, NSAID usage can result in fatal GI ulceration and bleeding. Even in short-term use, they triple the risk of serious GI outcomes. According to published studies, the incidence of NSAID-induced GI ulcers is 23% within 7 days of treatment.

7. Another serious side effect is an elevation of certain kinds of liver enzymes in the blood, which may be an indication that the liver is stressed. All NSAIDs are associated with liver enzyme elevations. While the levels of liver enzymes in the blood can fluctuate past a commonly agreed-upon “normal” range for benign reasons, increases in certain liver enzymes beyond three times the upper limit of normal (“**ULN**”) are commonly called “clinically significant increases” or “liver transaminase elevations” (“**LTEs**”). Some NSAIDs, such as naproxen, are associated with less frequent and lower liver enzyme elevations, while others, are associated with more frequent and higher liver enzyme elevations.

8. In addition, NSAIDs can contribute to heart and cardiovascular conditions, as well as kidney symptoms and liver symptoms. These side effects occur at an even higher rates in patients with other common underlying health conditions (e.g. arthritis, hypertension and obesity) and in the elderly.

9. Despite this, there has been a lack of innovation in NSAIDs and other non-opioid pain-relief medications in the last 20 years. As explained further below, Antibe has been working to develop the Drug in furtherance of such innovation.

### 3. Regulatory Framework in Canada and the United States

10. Drug development is highly regulated world-wide. Every country has its own regulatory legislation, processes and regulator. Drug development guidelines are harmonized across much of the world and drug development processes, particularly in Canada and the US, follow a certain process, prescribed by the requirements of the Canadian regulator, Health Canada, and the US regulator, the FDA.

11. The FDA is often considered the most important regulatory body in the world as the US has the largest drug market in the world and is respected by regulators in other countries. In some instances, drugs that are approved to be marketed for human use by the FDA may be approved by regulators in other countries based, in large part, on the FDA approval.

12. Generally, the drug development process consists of:

(a) Pre-clinical studies: These are performed in test tubes or on animals for the purpose of determining whether a drug is safe for human development;

(b) "Phase 1": Clinical (i.e., human) studies where a small dose of the drug is given to healthy volunteers. If the drug appears safe, increased doses of the drug are given to healthy volunteers for different durations;

(c) "Phase 2": The drug is given in different doses and for different durations to patients who have the condition(s) the drug is intended to treat. The condition(s) the drug is intended to treat is called the "Indication." The purpose of Phase 2 testing is to identify what effects the drug has, determine whether it has the desired effectiveness and safety, and to determine the appropriate dose of the drug; and

(d) "Phase 3": The drug is given to larger numbers of patients to confirm whether the drug is safe and effective.

13. As will be outlined in greater detail below, in Canada, in order to conduct any clinical trial, a drug developer files a clinical trial application for each trial with Health Canada. Health Canada then has 30 days to approve or reject the application. A drug developer can only proceed with a trial once Health Canada approves it.

14. Conversely, in the US, a drug developer files an Investigational New Drug ("IND") Application with the FDA, and once the IND is cleared, a drug developer is allowed to administer an investigational drug to humans. Prior to each clinical trial, the drug developer files the relevant study documents into the IND. The FDA may ask questions or make suggestions with respect to a clinical trial design. However, a developer can proceed with clinical trials unless a hold is instituted by the FDA. Both Health Canada and the FDA (and any regulator) can also place a hold on any trial at any time.

### 4. Marketability of a Drug

15. In today's global pharmaceutical landscape, smaller pharmaceutical entities like Antibe are at the forefront of drug development. These organizations are more likely than large pharmaceutical companies to invest resources into research and development, to develop drug candidates and to do the initial work of conducting preclinical studies and clinical trials to ensure safety and efficacy.

16. Conversely, larger pharmaceutical companies—who often have extensive resources, global reach, and established distribution networks—will often wait to acquire drugs from the smaller companies once the drugs have reached a certain stage of developmental or regulatory approval. This happens either through partnerships, licensing agreements, or outright acquisition (of the drug or the company). As drugs progress through the developmental phases and demonstrate promising results in clinical trials, they become more attractive to larger pharmaceutical corporations.

17. Phase 2 completion is considered the most significant inflection point in a drug's valuation and greatly enhances the marketability of the drug from a business development perspective; it is this point in time that many commercial partners will look to in-license or acquire the asset.

### 5. The Applicant's Business and the Development of Otenaproxesul for Chronic Use and LTEs

18. In the early 2000s, Antibe's founder made a novel discovery: that hydrogen sulfide has anti-inflammatory properties and the potential to prevent the GI damage caused by NSAIDs. Antibe used this knowledge to develop the Drug, which is a hydrogen sulfide-

releasing derivative of naproxen (naproxen is among the most commonly used, and most cardiovascular-safe, of the NSAID class).

19. Antibe's original project was to develop the Drug for chronic (long-term) pain—including for conditions such as osteoarthritis, ankylosing spondylitis, or rheumatoid arthritis—and to obtain regulatory approval for the Drug in the US and other major pharmaceutical markets including Europe, Japan and Canada.

20. In June of 2014, Antibe began the Drug's first in-human (i.e., Phase 1) trial in Canada. During this study, for the first time, Antibe experienced instances of LTEs in patients when they returned for a post-study follow up. In mid-March 2015, after two months of intensive review of all safety data collected in and subsequent to the initial Phase 1 study, Antibe concluded its Phase 1 trials.

21. In early 2016, Antibe conducted a 10-day Phase 2 study of 12 osteoarthritis patients to establish whether a lower dose of the Drug could deliver sufficient pain-relief. The trial showed patients rated the drug highly in treating their pain. There were no liver issues apart from one patient who exhibited LTEs. The patient was undergoing chemotherapy for cancer at the time, and the chemotherapy agent is known to cause LTEs.

22. In the fall of 2017, Antibe conducted a large, 244-subject, 14-day Phase 2 GI safety study that compared the outcomes of the Drug versus those of prescription-strength naproxen. The Drug had a significant GI safety advantage over naproxen (42.1% of subjects on naproxen had gastric ulcers compared to 2.5% of those on the Drug) and the incidence of Drug-related LTEs occurred only in approximately 5% of those taking the

Drug (which was in general concordance with the 1-4% range commonly associated with NSAIDs).

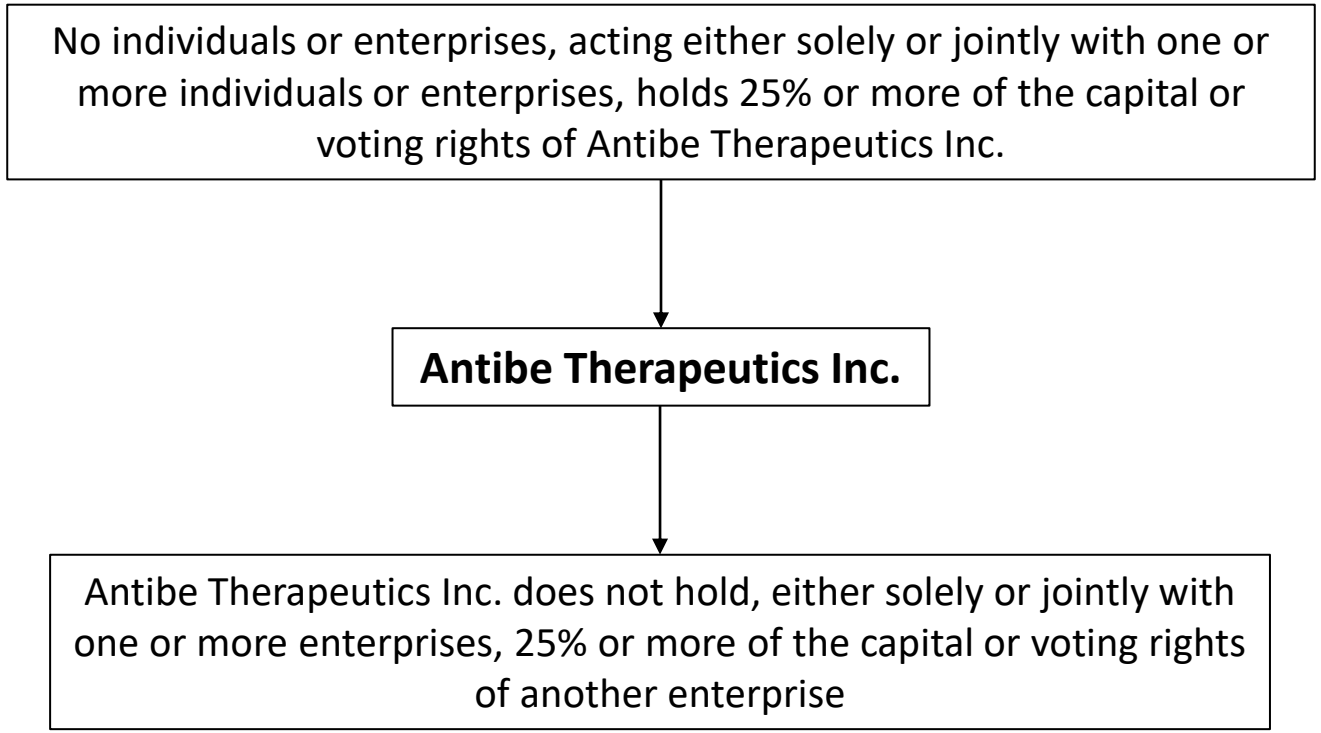
23. In early 2019, Antibe conducted two further studies. One of these was a 14-day study involving 384 patients at three doses (the "**Phase 2B Effectiveness Study**"). The Phase 2B Effectiveness Study demonstrated that the Drug had impressive statistically significant efficacy at both higher doses, and suggested that the lowest dose would likely have good efficacy. The drug-related LTE incidence for all study patients, regardless of dose, was in the 9-12% range. As with previous studies, the LTEs were only detected at follow-up appointments 10 days after drug administration was completed. It was also apparent that the incidence of LTEs was exacerbated in patients with other liver stressors such as concurrent and post-administration use of Tylenol, which also causes LTEs.

This is **Exhibit "A"**
Referred to in the Affidavit of Scott Curtis
Affirmed remotely before me this 8th day of April, 2024

Dillon Gohil

A Commissioner for Taking Affidavits (or as may be)

# Antibe Therapeutics Inc. Corporate Structure (31 March 2023)



This is **Exhibit "B"**
Referred to in the Affidavit of Scott Curtis
Affirmed remotely before me this 8th day of April, 2024

Dillon Gohil

A Commissioner for Taking Affidavits (or as may be)

**AT THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE**

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE (6TH EDITION, 1 AUGUST 2016)**

**SIAC ARBITRATION NO. 021 OF 2022**

Between

**NUANCE PHARMA LIMITED**

*(Claimant)*

And

**ANTIBE THERAPEUTICS INC.**

*(Respondent)*

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# FINAL AWARD

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Dated this 27th day of February 2024

Registered in SIAC Registry of Awards as:
Award No. 024 of 2024
on 01 March 2024

**SIAC ARBITRATION NO. 021 OF 2022**

IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE
(6TH EDITION, 1 AUGUST 2016)

BETWEEN

NUANCE PHARMA LIMITED ("**CLAIMANT**")

AND

ANTIBE THERAPEUTICS INC. ("**RESPONDENT**")

# FINAL AWARD

27 February 2024

*Tribunal*
Ms. Catherine Amirfar, Tribunal

*Administrative Secretary*
Mr. Romain Zamour

*Seat of Arbitration*
Singapore

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# I.

# INTRODUCTION

1. The Claimant in this arbitration is Nuance Pharma Limited ("**Nuance**" or the "**Claimant**"), a Hong-Kong incorporated biopharmaceutical company focused on licensing, developing and commercializing medical therapies in the Greater China region,[1] with its registered address at Unit 417 4/F, Lippo Centre Tower Two, No. 89 Queensway, Admiralty, Hong Kong. Nuance Pharma Limited is the 100% subsidiary of Nuance Biotech and the 100% shareholder of Nuance Pharma (Shanghai) Co. Ltd. It is a subsidiary of CBC Group, Asia's largest healthcare-dedicated investment firm. The Claimant is represented in these proceedings by Ms. Wendy Lin, Ms. Goh Wei Wei, and Mr. Andrew Chen, WongPartnership LLP, 12 Marina Boulevard Level 28, Marina Bay Financial Centre Tower 3, Singapore 018982.

2. The Respondent is Antibe Therapeutics Inc. ("**Antibe**" or the "**Respondent**") (together with the Claimant, the "**Parties**"), a biotech company registered under the laws of the Province of Ontario in Canada, with its registered office located at 15 Prince Arthur Avenue, Toronto, Ontario, M5R 1B2, Canada. The Respondent is represented in these proceedings by Mr. Chris G. Paliare, Ms. Karen Jones, and Ms. Kartiga Thavaraj, Paliare Roland Rosenberg Rothstein LLP, 155 Wellington Street West, 35th Floor, Toronto, ON M5V 3H1, Canada.

3. A dispute has arisen between Nuance and Antibe, in respect of which the Claimant commenced arbitration pursuant to a License Agreement dated 9 February 2021 between the Claimant and the Respondent (the "**License Agreement**").[2]

4. The dispute concerns the Respondent's alleged material misrepresentations and omissions, both pre-dating and post-dating the conclusion of the License Agreement, which are said to have (*i*) induced the Claimant to enter into the License Agreement and to continue to perform it, (*ii*) materially breached the License Agreement, and (*iii*) caused the License Agreement to be entered into by mistake.

# II.

# PROCEDURAL HISTORY

5. On 21 January 2022,[3] the Claimant filed with the Registrar ("**Registrar**") of the Court of Arbitration of the Singapore International Arbitration Centre ("**SIAC**") a Notice

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[1] Including the People's Republic of China, the Hong Kong Special Administrative Region of the People's Republic of China, the Macau Special Administrative Region of the People's Republic of China, and Taiwan.

[2] Exhibit C-007, License Agreement dated 9 February 2021 by and between Antibe Therapeutics Inc. and Nuance Pharma Limited (the "License Agreement").

[3] Dates reflected herein principally refer to the time zone of the Tribunal.

of Arbitration, pursuant to Section 11.10(a) of the License Agreement and Rule 3.1 of the Arbitration Rules of the Singapore International Arbitration Centre Arbitration Rules (6th Edition, 1 August 2016) (the "**SIAC Rules**").

6. Pursuant to Rule 3.3 of the SIAC Rules, the arbitration is deemed to have commenced on 24 January 2022.

7. On 3 February 2022, the Respondent filed a Response to the Notice of Arbitration, pursuant to Rule 4.1 of the SIAC Rules. In the Response, the Respondent advanced a jurisdictional objection, arguing that "[a]ny arbitration that is constituted by Nuance prior to the fulfilment of the pre-conditions to arbitration outlined in the License Agreement is premature."[4]

8. On 15 February 2022, the Claimant wrote to SIAC that pursuant to Rule 10.2 of the SIAC Rules, the Parties have agreed to extend the timeline for Parties to reach an agreement on the nomination of the sole arbitrator to 28 February 2022.

9. In Claimant's Response to Respondent's Jurisdictional Objection under Rule 28.1 of the SIAC Rules, dated 18 February 2022, the Claimant responded to the Respondent's jurisdictional objection.

10. On 23 February 2022, the Respondent notified SIAC of the Parties' agreement to nominate Ms. Catherine Amirfar as the sole arbitrator in this arbitration. The Claimant confirmed its agreement on the nomination by an email on 24 February 2022, Singapore time.

11. On 4 April 2022, the Registrar stated that it had determined, under Rule 28.1 of the SIAC Rules, that the objection shall not be referred to the SIAC Court for determination; and that, accordingly, SIAC was now proceeding with the constitution of the tribunal.

12. On 13 May 2022, SIAC informed the Parties that the President of the Court of Arbitration of SIAC had appointed the Tribunal, consisting of Ms. Catherine Amirfar (the "**Tribunal**"). SIAC enclosed a copy of the Letter of Appointment of Arbitrator dated 9 May 2022, made pursuant to Rule 9.3 of the SIAC Rules.

13. On 21 May 2022, the Tribunal wrote to the Parties, seeking to fix a date for a preliminary meeting by videoconference, and providing a draft Procedural Order No. 1 for the Parties' comments. On 22 May 2022, the Claimant indicated that the Parties had conferred and were both available for a preliminary meeting by videoconference on 9 June 2022 7.30 pm EST / 10 June 2022 7.30 am Singapore time. On 7/8 June 2022, the Parties provided their respective positions on draft Procedural Order No. 1.

14. The preliminary meeting took place by videoconference on 9 June 2022 7.30 pm EST / 10 June 2022 7.30 am Singapore time.

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[4] *See* Response to Notice of Arbitration ("Response") ¶¶ 13–20 (quotation at ¶ 20).

15. On 14 June 2022, further to the preliminary meeting, the Tribunal wrote to the Parties, seeking to fix dates for oral argument for the Respondent's jurisdictional objections, oral argument on objection in Redfern, and hearing in the arbitration. The Tribunal attached the CV of Mr. Romain Zamour, the proposed administrative secretary, confirmed the hourly rate of SGD 250, and sought the Parties' written consent to the use of a secretary for this matter. On 20 June 2022, the Claimant shared the Parties' common available dates for oral argument for the Respondent's jurisdictional objections, oral argument on objections in Redfern, and hearing in the arbitration. The Claimant also confirmed that both Parties consented to the appointment of Mr. Romain Zamour as administrative secretary. On 5 October 2023, the Tribunal shared with the Parties the declaration of independence, impartiality, and confidentiality of the administrative secretary. On 6 October 2023, the Parties confirmed that they had no objection.

16. On 25 June 2022, the Tribunal issued Procedural Order No. 1 to establish a procedural timetable for this case.

17. On 8 July 2022, pursuant to paragraph 2 of Procedural Order No. 1, the Claimant submitted its Statement of Claim, together with exhibits C-001 to C-028, and legal authorities CLA-001 to CLA-024.

18. On 27 July 2022, the Respondent wrote on behalf of the Parties, stating that "[t]he Parties are currently in the process of engaging in the dispute resolution procedure outlined at section 11.10 of the License Agreement," stating that as such the Parties have agreed to modify certain deadlines in the timetable set out in Procedural Order No. 1, and setting out the Parties' mutually agreed modifications. The letter stated that "Antibe has agreed to withdraw its motion with respect to the arbitrator's jurisdiction on the grounds that the Parties did not follow the dispute resolution procedure." On 11 August 2022, the Respondent wrote to follow-up on the letter of 27 July 2022.

19. On 12 August 2022, the Tribunal issued Procedural Order No. 2, ordering certain modifications to the procedural timetable in the light of the Parties' agreement.

20. On 18 September 2022, the Respondent wrote on behalf of the Parties, stating that "[t]he Parties are currently in the process of engaging in the dispute resolution procedure outlined at section 11.10 of the License Agreement," stating that as such the Parties have agreed to modify certain deadlines in the timetable set out in Procedural Order No. 2, and setting out the Parties' mutually agreed modifications. On 18 September 2022, the Tribunal indicated that the Parties' mutually agreed modifications to Procedural Order No. 2 were granted, and noted that a revised procedural order would be circulated in due course.

21. On 28 September 2022, the Tribunal issued Procedural Order No. 3, memorializing the agreed modifications to Procedural Order No. 2.

22. On 7 October 2022, pursuant to paragraph 1 of Procedural Order No. 3, the Respondent submitted its Statement of Defence, together with exhibits R-001 to R-051, and legal authorities RL-001 to RL-051.

23. On 9 December 2022, pursuant to paragraph 10 of Procedural Order No. 1, the Parties sent to the Tribunal their respective Redfern Schedules.

24. On 19 December 2022 (EST) / 20 December 2022 (SGT), pursuant to paragraph 11 of Procedural Order No. 1, the Tribunal conducted a videoconference with the Parties to discuss the objections in the Redfern Schedules. During the videoconference, the Tribunal requested the Parties to confer and revert on a number of outstanding points. On 29 December 2022, the Tribunal followed-up on this request.

25. On 1 January 2023, the Respondent wrote on behalf of the Parties, stating that the Parties had been unable to resolve any of the production issues except one. With the Respondent's consent, on 4 January 2023, the Claimant shared with the Tribunal the Parties' correspondence setting out their respective positions on the outstanding document requests.

26. On 5 January 2023, the Tribunal issued Procedural Order No. 4, containing her decisions on the Parties' outstanding disagreements in their respective Redfern Schedules (contained in Annex A and Annex B to the order).

27. On 13 January 2023, the Respondent wrote to seek reconsideration of request #6 of Antibe's request to produce. The Respondent's email also provided the text of the Claimant's response to the request for reconsideration. On 19 January 2023, the Tribunal denied the Respondent's request for reconsideration.

28. On 9 February 2023, the Claimant wrote on behalf of the Parties, advising an agreed revision to the due dates for the submission of the Reply and of the Rejoinder. On 10 February 2023, the Tribunal indicated that the agreed modifications were approved.

29. By emails of 15 February 2023 and 23 February 2023 from the Respondent, and 21 February 2023 from the Claimant, the Parties wrote regarding certain document production matters.

30. On 17 February 2023, pursuant to paragraph 15 of Procedural Order No. 1 as modified in the 10 February 2023 email, the Claimant submitted its Reply, together with exhibits C-029 to C-069, and legal authorities CLA-025 to CLA-031.

31. By emails of 22 February 2023 and 1 March 2023 from the Claimant, and 27 February 2023 from the Respondent, the Parties wrote regarding certain requested further adjustments to the procedural timetable. The 22 February 2023 communication also contained the Claimant's notification of its position with respect to the US$ 20 million upfront payment under the License Agreement.

32. On 3 March 2023, the Tribunal issued Procedural Order No. 5, ordering certain further modifications to the procedural timetable in the light of the Parties' agreement, and addressing various other points, including certain document production matters, further requested modifications to the procedural timetable not agreed by the Parties, the date and time for the pre-hearing organizational meeting contemplated at paragraph 25 of Procedural Order No. 1, and the Parties' joint submission of points of agreement and disagreement.

33. On 7 March 2023, pursuant to paragraph 2(e) of Procedural Order No. 5, the Claimant provided certain confirmations regarding its document searches. The Claimant stated that, out of prudence, it had conducted a further search of its records with assistance from its IT department and had located additional responsive documents, which it provided in attachment. The Claimant further confirmed that "[t]here are no other documents connected to N-0004 and/or falling within the scope of the Tribunal's orders for Antibe's document requests" and "[t]he manner in which the Claimant previously conducted its document searches is consistent with the meaning of 'relevant' and 'internal' set out by the Tribunal at paragraph 2.d of the Procedural Order No. 5."

34. On 8 March 2023, pursuant to paragraph 1(b) of Procedural Order No. 5, the Respondent submitted its Rejoinder, together with exhibits R-052 to R-058, and legal authorities RL-052 to RL-065.

35. On 23 March 2023, the Claimant sought an extension for it to file its expert/technical evidence, as well as consequential adjustments. The same day, the Respondent opposed the Claimant's requested extension. On 23 March 2023, the Tribunal advised that the Claimant's requested extension and consequential adjustments to the timetable were granted.

36. On 24 March 2023, pursuant to paragraph 18 of Procedural Order No. 1 as modified on 23 March 2023, the Claimant submitted the Witness Statement of Mr Mark G. Lotter dated 24 March 2023 and the Witness Statement of Annie Lee dated 24 March 2023, together with exhibits C-070 to C-075. On 29 March 2023, pursuant to paragraph 18 of Procedural Order No. 1 as modified on 23 March 2023, the Claimant submitted the Witness Statement of Ms Cathleen Chan dated 29 March 2023.

37. By letter dated 5 April 2023 and email of 6 April 2023 from the Respondent, and email of 6 April 2023 from the Claimant, the Parties argued about certain document production matters. On 10 April 2023, the Tribunal directed Nuance to provide documents in its possession, custody or control in response to Category 2 of Antibe's requests that encompass not just the internal documents of Nuance but also documents, if any, exchanged with the CBC Group relating to "initial research on the Drug and Antibe based on publicly-available information" (paragraph 18 of Witness Statement of Annie Lee), and to do so by close of business on 12 April 2023.

38. On 12 April 2023 (following a request for a brief extension, which was granted), pursuant to the Tribunal's directions of 10 April 2023, the Claimant confirmed that,

to the best of its knowledge and belief, there are no further documents in Nuance's possession, custody or control falling within the scope of the Tribunal's directions. Further, and for completeness, the Claimant and Ms. Lee enclosed two further documents, numbered C-076 and C-077.

39. On 14 April 2023, pursuant to paragraph 19 of Procedural Order No. 1 as modified on 23 March 2023, the Respondent submitted the Witness Statement of Daniel Legault dated 13 April 2023 and the Witness Statement of Ella Korets-Smith dated 14 April 2023.

40. On 17 April 2023, the Tribunal issued Procedural Order No. 6, ordering certain further modifications to the procedural timetable, and addressing various other points, including certain document production matters, and the format that the Parties shall use in putting together a proposed hearing schedule (such format contained in Annex A to the order).

41. On 19 April 2023, pursuant to paragraph 19 of Procedural Order No. 1 as modified on 23 March 2023, the Respondent submitted the Witness Statement of Jeffrey Wayne, B.SC., M.B.A. dated 18 April 2023 and the Witness Statement of Jonathan P Jarow, MD dated 19 April 2023, along with four un-numbered exhibits.

42. By emails of 21 April 2023 from the Claimant, and related emails of 21 April 2023 from the Respondent and 24 April 2023 from the Claimant, the Parties transmitted their statement of points of agreement and disagreement as contemplated at paragraph 6 of Procedural Order No. 5, together with the Parties' positions on the hearing schedule in the format of Annex A to Procedural Order No. 6.

43. On 24 April 2023, as contemplated at paragraph 5 of Procedural Order No. 5, the pre-hearing organizational meeting occurred via conference call.

44. On 26 April 2023, the Claimant wrote to indicate that the Parties were still conferring on the hearing schedule and would revert the following day, to confirm the identity of its party representatives, and to seek directions on the use of demonstratives at the hearing. On 27 April 2023, the Claimant wrote on behalf of the Parties, transmitting the Parties' proposed schedule in the form of a revised draft Annex A. On 29 April 2023, the Tribunal wrote to the Parties regarding the proposed schedule, to which the Claimant responded on behalf of the Parties on the same day. On 2 May 2023, the Respondent wrote on behalf of the Parties, transmitting a joint list of "Key Terms" and "Key Parties."

45. On 2 May 2023, the Tribunal issued Procedural Order No. 7, regarding the organization of the hearing (along with an Annex A containing the hearing schedule).

46. By emails of 7 May 2023, the Claimant and the Respondent shared demonstratives, which they intended to use at the hearing and which had raised no objection from the other party: the Claimant's Opening Statement (a set of slides) and the Respondent's

Timeline for Opening (a chronology with links to underlying documents referenced in the chronology).

47. From 8 to 12 May 2023, the hearing was held at Maxwell Chambers, Singapore. Over the course of the hearing, the following persons were in attendance:

**Tribunal**
Ms. Catherine Amirfar
**Claimant**
*Counsel*
Ms. Wendy Lin
Ms. Goh Wei Wei
Mr. Andrew Chen
Ms. Tan Ying Jenn
*Party Representatives*
Mr. Mark Lotter
Mr. Charlie Chen
**Respondent**
*Counsel*
Mr. Chris Paliare
Ms. Karen Jones
Ms. Kartiga Thavaraj
*Party Representative*
Mr. Daniel Legault
**Claimant's Witnesses**
Mr. Mark Lotter
Dr. Cathleen Chan
Ms. Annie Lee
**Respondent's Witnesses**
Ms. Ella Korets-Smith
Mr. Daniel Legault
Dr. Jonathan P Jarow
Mr. Jeffrey Wayne
**Administrative Secretary**
Mr. Romain Zamour
**Court Reporter**
Epiq Singpore Pte Ltd

48. Pursuant to paragraph 6 of Procedural Order No. 7, the Claimant prepared and provided a hard-copy set of submissions for the Tribunal. At the outset of the hearing, the Parties, by agreement, introduced into evidence a number of new exhibits and legal authorities, numbered C-078 to C-098, R-059, CLA-032 and CLA-033. In the course of the hearing, two additional exhibits were introduced into evidence: Hearing Exhibit 1 and Hearing Exhibit 2.

49. On 12 May 2023, as contemplated at paragraph 8 of Procedural Order No. 7, after the close of the evidence at the hearing, the Tribunal conferred with the Parties regarding potential post-hearing briefs.

50. On 21 May 2023, the Tribunal issued Procedural Order No. 8, regarding post-hearing briefs and costs submissions.

51. On 22 June 2023, the Respondent wrote to request an oral hearing after receipt of the post-hearing briefs. On 23 June 2023, the Claimant commented on the Respondent's request. On 24 June 2023, the Tribunal acknowledged receipt of the Parties' communications and stated that she reserved her decision on the request for now, and would advise the Parties of her decision after reviewing the post-hearing briefs.

52. On 6 July 2023, pursuant to paragraph 1 of Procedural Order No. 8, the Claimant and the Respondent simultaneously filed their post-hearing briefs. Together with its post-hearing brief, the Claimant adduced legal authorities CLA-034 to CLA-050. The Respondent appears to have submitted certain unnumbered legal authorities with its post-hearing brief.

53. On 13 July 2023, the Claimant wrote to the Tribunal on behalf of the Parties, stating that the Parties had agreed to a short extension until 17 July 2023 for the filing of the costs submissions, and seeking an extension from the Tribunal. By email of the same day, the Tribunal granted the agreed extension.

54. On 17 July 2023, pursuant to paragraph 3 of Procedural Order No. 8 as modified, the Claimant and the Respondent simultaneously filed their costs submissions, together with appendixes. The Claimant also noted that the Respondent had provided a hyperlinked version of its post-hearing brief, and proposed to do the same. By email of 18 July 2023, the Tribunal stated that she would welcome a hyperlinked version of the Claimant's post-hearing brief.

55. On 20 July 2023, the Respondent responded to the position that the Claimant took on interest in its costs submission and stated the Respondent's position on interest. On 29 July 2023, the Claimant provided a hyperlinked version of the Claimant's post-hearing brief. The Claimant also provided the proposed errata to the hearing transcripts, as agreed among the Parties.

56. On 8 August 2023, the Tribunal explained that she did not see a basis to revisit her direction that the Parties submit post-hearing briefs in lieu of oral closing submissions; consulted the Parties regarding the closure of the proceedings; and sought the Parties' consent to amending paragraph 28 of Procedural Order No. 1, to require submission of the draft Award to SIAC for its review no later than 60 days from the date on which the proceedings are declared closed (as opposed to 60 days from the end of post-hearing submissions), it being understood that such modification supersedes the timeframe set forth in SIAC Rule 32.3. On 9 August 2023, the Respondent stated that it had no objection to the closing of the

proceedings and that it also had no objection to the proposed amendment to paragraph 28 of Procedural Order No. 1. On 10 August 2023, the Claimant stated that similarly it had no objection to the closing of the proceedings and to the Tribunal's proposed amendment to Procedural Order No. 1. The Claimant also stated that it reserved the right to seek injunctive or other appropriate relief from the Tribunal in connection from the US$ 20 million representing the Claimant's payment to the Respondent under the License Agreement. On 11 August 2023, the Respondent responded to the Claimant, stating that both Parties had consented to the close of the proceedings and that, once the Claimant had consented to the closing of the proceedings, it was precluded from bringing another proceeding against the Respondent.

57. On 6 October 2023, the Tribunal issued Procedural Order No. 9, denying the Respondent's request for an oral hearing after the post-hearing briefs, approving the Parties' agreed proposed modifications to the transcripts, confirming that with the Parties' agreement, the Tribunal would submit her draft Award to SIAC by 60 days from 6 October 2023, the date on which the proceedings were declared closed pursuant to Rule 32.1 of the SIAC Rules, and noting that no decision is required on the Claimant's purported reservation of rights in connection with the US$20 million payment under the License Agreement.

58. On 4 December 2023, the Claimant wrote to the Tribunal, seeking the Tribunal's indication on the timing of the final Award and notifying the Tribunal of an "intended request" for interim relief. On the same day, the Respondent responded, emphasizing the closure of the proceedings. On the same day, the Tribunal wrote to the Parties, reminding the Parties that the Tribunal in Procedural Order No. 9 had declared the proceedings closed, and that as such the Tribunal had not reviewed the additional evidence attached to the Claimant's email. The Tribunal noted that the Claimant made no application and therefore no decision was required. As to the Claimant's query regarding the timing of the issuance of the Award, the Tribunal stated that, as agreed by the Parties and provided in Procedural Order No. 9, the Tribunal earlier on that day had submitted her draft Award to SIAC for its review. On 11 December 2023, the Claimant indicated that it would not be proceeding with the request for interim relief foreshadowed in the Claimant's communication of 4 December 2023.

59. On 30 January 2024, the Tribunal wrote to the Parties, updating them on the expected timing for the issuance of the final Award, and seeking the Parties' consent to treat the fees and expenses of the administrative secretary as part of the "costs of the arbitration" under SIAC Rule 35.2(c), as part of "the costs of . . . any other assistance reasonably required by the Tribunal." The Respondent and the Claimant so agreed on the same day.

## III.

## FACTUAL BACKGROUND

60. This section sets out the summary of facts from the Parties' written and oral submissions, as well as the evidence presented at the hearing.

### A. Background on the Drug

61. The drug at issue in this case (the "**Drug**") is called otenaproxesul.[5] It is also referred to as "ATB-346." It is a "hydrogen sulfide releasing version of naproxen," and a kind of nonsteroidal anti-inflammatory drug ("**NSAID**").[6]

62. NSAIDs are "among the most common pain relief medicines in the world."[7] Some NSAIDs are sold over the counter, such as Aspirin and low doses of naproxen (Aleve) and ibuprofen (Advil). Other NSAIDs are only sold via prescription. NSAIDs are indicated for multiple conditions, ranging from acute pain caused by injury or surgery to chronic pain and inflammation caused by diseases such as osteoarthritis.[8]

63. A major issue with NSAIDs is that they can cause gastrointestinal ("**GI**") ulcers and bleeding, and more rarely can contribute to heart and cardiovascular conditions, as well as kidney and liver symptoms.[9]

64. In particular, NSAIDs can cause the elevation of certain enzymes in the liver, known as aminotransferase enzymes, and in particular alanine aminotransferase ("**ALT**") and aspartate aminotransferase ("**AST**"). An elevation of either ALT or AST may indicate that the liver is stressed. Increases in either ALT or AST beyond three times the upper limit of normal ("**ULN**") in the blood are commonly called "clinically significant increases" or "liver transaminase elevations" ("**LTEs**").[10]

65. In the early and mid-2000s, Antibe's founder discovered the anti-inflammatory properties of hydrogen sulfide and began combining hydrogen sulfide-releasing molecules with other molecules to create novel drugs with anti-inflammatory effects, such as the Drug. Antibe considers the Drug promising as it has demonstrated similar anti-inflammatory qualities to NSAID naproxen, with fewer side effects, especially those relating to GI issues.[11]

### B. Overview of Drug Development in the United States and Canada

66. Generally speaking, drug development is complex and highly regulated, and it is an expensive, risky, and time-consuming process.[12] Drug development proceeds in multiple steps or stages.[13] It begins in the laboratory, with the identification of a potentially

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5 Witness Statement of Daniel Legault ("Legault") ¶ 35.
6 Legault ¶¶ 17, 35.
7 Legault ¶ 18.
8 Legault ¶¶ 18, 20.
9 Legault ¶ 19.
10 Legault ¶ 21.
11 Legault ¶¶ 17, 35; *see* Statement of Defence of Antibe ("Defence") ¶¶ 72–73.
12 *See* Defence ¶¶ 53–54; Legault ¶¶ 26–27.
13 Witness Statement of Jonathan P Jarow, MD ("Jarow") ¶ 20.

therapeutic chemical entity. It then proceeds to nonclinical testing (for instance, testing in animals).[14]

67. Following nonclinical testing, the clinical investigation generally proceeds in three phases.[15] Phase 1 clinical studies are typically short-term, performed in a small number of healthy volunteers or patients, and primarily designed to assess the safety of the drug.[16]

68. Upon a satisfactory safety assessment in the Phase 1 clinical studies, drug development typically proceeds to Phase 2 clinical studies. These are "performed to assess proof of concept of a drug's effectiveness, continue safety data collection, and help determine the dose(s) (and duration) to bring forward in clinical development."[17] Typically, these are controlled studies performed on a larger number of patients than the Phase 1 studies.

69. Phase 3 clinical studies are "larger-scale clinical trials of longer duration performed in the intended treatment population."[18] These are used "to provide substantial evidence of effectiveness while collecting additional safety information."[19]

70. That said, multiple drug development programs are "not linear."[20] Other studies may take place prior to or in parallel with Phase 3 studies, including absorption, distribution, metabolism and excretion ("**ADME**") studies, dosage and safety studies, etc.[21]

71. The process and regulation for drug development varies by country.[22] In Canada, the regulator – Health Canada – must approve in advance each clinical trial conducted on humans. A drug developer must submit a Clinical Trial Application ("**CTA**") to Health Canada, which must approve or reject the trial within 30 days. Health Canada can also seek additional information or request that changes be made to the clinical trial protocol.[23] Once a drug has completed all the required Phase 1, Phase 2, and Phase 3 (and any other) studies, the drug developer files a New Drug Application ("**NDA**") with Health Canada to obtain approval to market the drug in Canada.[24]

72. In the United States, following nonclinical testing and before clinical testing may proceed, a drug developer must submit an Investigational New Drug ("**IND**") application to the regulator – the Food and Drug Administration ("**FDA**"). The FDA has 30 days to provide clearance or request additional information. Upon clearance, the IND is considered

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14 Jarow ¶ 20; *see also* Defence ¶ 56(a); Legault ¶ 28(a).
15 Jarow ¶ 21; *see also* Defence ¶ 56(b)-(d); Legault ¶ 28(b)-(d).
16 Jarow ¶ 22.
17 Jarow ¶ 23.
18 Jarow ¶ 24.
19 Jarow ¶ 24.
20 Jarow ¶ 25.
21 Legault ¶ 29.
22 Legault ¶ 30.
23 Legault ¶ 30.
24 Legault ¶ 31.

"open," and a drug developer is allowed to administer the drug to humans in the United States. The IND must be regularly updated. When all studies have been completed, the drug developer files an NDA with the FDA in order to obtain approval to market the drug in the United States.[25] The FDA is often considered the most important regulatory body in the world, due to the size of the United States drug market and the respect that other regulators have for the FDA. In some cases, regulatory approvals in other countries may be based in large part on FDA approval in the United States.[26] Licensing is common in the drug development field. A drug licensor typically licenses a drug for a particular "territory" (or geographical region) and a particular "field" (or the specific "indications" or uses for a drug).[27]

### C. Antibe's Phase 1 and 2 Approval Process in Canada

73. In mid-2014, Antibe completed preclinical studies for the Drug and applied to Health Canada for approval to do its first clinical study of the Drug. The CTA was approved and Antibe began the Drug's first Phase 1 trial.[28]

74. In the fall of 2014, Antibe identified transient LTEs in 3 of 6 subjects within the second-highest cohort of 750mg/day for 14 days. "Transient" means that the elevated levels returned to normal without treatment or medical intervention. All the study volunteers remained asymptomatic. The principal investigator for the study concluded that the LTEs were likely due to influenza, and the study continued.[29]

75. Antibe then tested the Drug at 1,500mg/day for 14 days. Five of the 6 subjects showed LTEs. In 4, the LTEs were discovered post-treatment. In the fifth, the LTEs were thought to likely have been caused by factors unrelated to the Drug.[30] Antibe decided to pause the drug's development until further investigation could be carried out as to the cause of the LTEs, a decision that it announced by press release dated 16 January 2015.[31]

76. In mid-March 2015, after two months of review of the safety data, Antibe concluded its Phase 1 trials, and issued a press release noting its intention to continue the clinical development of the Drug.[32]

77. In early 2016, Antibe applied to Health Canada for approval to do a 10-day Phase 2a study of 12 osteoarthritis patients to establish whether a lower 250 mg dose could deliver sufficient pain relief. Health Canada approved the CTA and Antibe conducted the trial. The patients rated the drug highly in treating their pain. One patient exhibited LTEs,

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25 Legault ¶ 32.
26 Legault ¶ 34.
27 *See* Defence ¶ 64.
28 Legault ¶ 36.
29 Legault ¶ 38.
30 Legault ¶ 39.
31 Legault ¶ 40; *see* Exhibit R-001.
32 Legault ¶ 41; *see* Exhibit R-0002.

which were attributed to a reaction to the chemotherapy that the patient was undergoing at the time.[33]

78. In the Fall of 2017, Antibe sought and received approval to conduct a large, 240-subject, 14-day GI safety study in healthy volunteers, comparing the outcomes of a daily dose of 250mg/day of the Drug to those of prescription-strength naproxen (the "**Phase 2B GI Safety Study**"). The Drug was found to have a significant GI safety advantage over naproxen. Drug-related LTEs were found in approximately 5% of subjects.[34]

79. In early 2019, Antibe sought and received approval to conduct a large, 14-day, placebo-controlled efficacy study involving 384 patients for Drug doses of 150, 200, and 250mg/day (the "**Phase 2B Efficacy Study**"). The study demonstrated impressive efficacy for both higher and lower doses. However, the drug-related LTE incidence for all study patients, regardless of dose, was in the 9-12% range. LTEs were only detected post-treatment.[35]

80. A clinical study report ("**CSR**") dated 21 December 2020 reported on the trial results, recommending that future studies investigate doses at or less than 150mg/day considering the LTEs.[36]

81. With the completion of the Phase 2B Efficacy Study in the fall of 2020, Antibe completed its Phase 2 program.

82. Antibe planned to conduct the Phase 3 trials in the United States, and it began preparing an IND application.[37]

**D. Antibe's 2021 AME Study in Canada**

83. As a result of the COVID-19 pandemic, Antibe believed it was unlikely to start its first planned Phase 3 trial until 2022. As a result, Antibe decided to conduct an absorption, metabolism and excretion study ("**AME Study**") in Canada.[38] According to Antibe: "For the Canadian AME study submission is planned for April/May 2021 with study initiation late Q2 2021."[39]

84. With this study, Antibe sought to identify lower effective doses of the Drug and to cover a longer dose administration period of 28 days (the longest previous clinical studies had been 14 days). The AME Study would also be a "precursor" to the ADME study

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33 Legault ¶¶ 42–43; *see* Exhibit R-003.
34 Legault ¶ 44; *see* Exhibit R-004.
35 Legault ¶¶ 46–47.
36 Legault ¶ 48; *see* Exhibit R-005, at 12.
37 Legault ¶¶ 49–50.
38 Legault ¶ 51.
39 Exhibit R-035.

that is required in the United States and Canada and generally done in parallel with Phase 3 studies.[40]

85. Dr. Jarow (one of Antibe's experts) at the hearing summarized the "very complex"[41] situation as follows:

> So at this stage – so the company is kind of in a pickle, let's be frank. They have a drug that is clearly shown in phase 2 studies that it appears to be efficacious to reduce symptoms in patients with osteoarthritis. It definitely or appears to decrease the GI toxicity seen with naproxen in the other phase 2 study. Yet they are having this very unusual liver toxicity. … It was observed after the drug was stopped. They say that there is a dose dependency but it wasn't clear that it was dose dependent, although the highest elevations in liver function tests were with the highest dose. And so – but they needed to find a window, if you will, where it was going to be both effective and safe, and so – and they needed longer durations of exposure. At that point they had only done 14 days.[42]

### E. The Parties' Introduction and Execution of the Term Sheet in 2020-21

86. The CBC Group connected the Parties in September 2020.[43] At the time, Nuance did not have any chronic-use NSAIDs in its portfolio.[44] It was looking for opportunities in the chronic pain field.[45] Following an introductory Zoom call on 6 October 2020, the Parties signed a non-disclosure agreement in mid-October 2020.[46]

87. The Parties had a lengthier introductory meeting on Zoom on 26 November 2020. Nuance shared its corporate pitch deck.[47]

88. The Parties had a further Zoom meeting on 17 December 2020. Antibe provided its corporate pitch deck (the "**Corporate Presentation**").[48]

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40 Legault ¶ 52.
41 Tr. (5) 23:15 (Dr. Jarow).
42 Tr. (5) 21:24–22:17 (Dr. Jarow).
43 Exhibit R-010; Exhibit R-011.
44 Witness Statement of Annie Lee ("Lee") ¶ 11.
45 Lee ¶ 16.
46 Exhibit R-017.
47 Exhibit R-018.
48 Exhibit R-019; Exhibit C-001.

89. On 23 December 2020, Nuance wrote to Antibe, stating "we are very confident that ATB346 has great potential and Nuance has the team, resources and drive to make this a success."[49] Nuance provided a draft non-binding term sheet and deal proposal.[50]

90. The draft term sheet concerned "Antibe's otenaproxesul (ATB-346)". It defined the "Field" as "The treatment of all human diseases and conditions, including, without limitation, osteoarthritis ["**OA**"], rheumatoid arthritis ["**RA**"], ankylosing spondylitis ["**AS**"]," and defined the "Territory" as "The Greater China Region, including mainland China, Hong Kong, Macau, and Taiwan". The term sheet provided that "Antibe would grant Nuance an exclusive license" to develop and commercialize the Drug for the Field in the Territory, proposed an upfront payment of US$ 20 million, development and commercial milestone payments potentially totaling US$ 80 million, and an 8% royalty, and proposed a 90-day Exclusivity Period for negotiation.[51]

91. On 29 December 2020, Antibe responded, noting that "Antibe's management team is enthusiastic about the opportunity to partner with Nuance for the China market," and that "we are willing to put this negotiation ahead of the larger partnering process in China, with the understanding that we will move quickly to resolution, which is in the best interests of both parties."[52]

92. As to the draft term sheet, Antibe requested, among other things, a 50-day exclusivity period (instead of the proposed 90 days) and a "royalty percentage to move towards a low double digit."[53]

93. On 30 December 2020, Nuance responded, noting in two separate emails (one from Mr. Lotter and one from Ms. Lee) that "Nuance and the team is well prepared to move forward at pace and move quickly to a resolution," "fully agree that this is in the interest of both parties," and "we are very keen to move fast and meet your requirements."[54] Nuance invited Antibe to send a proposed redline of the draft term sheet.

94. On the same day, Antibe sent a proposed redline of the draft term sheet. Antibe edited the definition of the "Field" to read "The treatment of disease conditions appropriate for NSAID use, including, without limitation, [OA], [RA], [AS]"; it proposed a royalty rate of 12.5%, and an Exclusivity Period of 50 days.[55]

95. On 31 December 2020, the Parties had a call. Nuance then sent the "latest [term sheet] reflecting our discussion just now."[56] Nuance stated: "Please review and we

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49 Exhibit C-004.
50 Exhibit R-020.
51 Exhibit R-020.
52 Exhibit R-022.
53 Exhibit R-022 (emphasis omitted).
54 Exhibit R-022.
55 Exhibit R-022.
56 Exhibit R-024.

look forward to proceeding to the next steps and commencing our collaboration. For the data room, please provide access to the following Nuance team member: [list of five Nuance team members]."[57]

96. On 6 January 2021, the Parties signed the Term Sheet, which defined the Field as "The treatment of disease conditions appropriate for NSAID use, including, without limitation, [OA], [RA], [AS]," and the Territory as "The Greater China Region, including mainland China, Hong Kong, Macau, and Taiwan". It provided for a License Grant, an upfront payment of US$ 20 million, development and commercial milestone payments potentially totaling US$ 80 million, a 12.5% royalty, and a 50-day Exclusivity Period for negotiation.[58]

97. Antibe wrote: "We are also working on preparing the Data Room and a draft of the Definitive Agreement, targeting the week of January 18th for having both of these available for your review." Nuance responded: "Annie and the team are on standby for access to the data room as well to review the first draft of the Definitive Agreement. As mentioned on the call, Nuance is committed to concluding the agreement ideally before the Chinese New Year break i.e. end January 2021."[59]

### F. Nuance's Due Diligence and the Parties' Draft Definitive Agreement in January to February 2021

98. On 11 January 2021, the Parties had an introductory call with Antibe's CEO (Mr. Legault). After the call, Nuance wrote: "Given the signed [term sheet] and planned next steps, we look forward to working with [] Ella, Rami and the team over the weeks ahead to get closure. … On our side, the team is on full alert to conclude by the end of the month i.e. to coincide with the Chinese New Year. In China, closing a deal around the Chinese New Year represents a chance for partners to forge a long and lasting relationship and ensure a successful future for the parties involved." Antibe responded: "we look forward to sleeves fully rolled up this month."[60]

99. On 19 January 2021, Antibe shared a Draft Definitive Agreement.[61]

100. On 25 January 2021, Antibe opened the Data Room to Nuance, using ShareVault. Antibe stated: "We look forward to receiving the redline Definitive Agreement and entertaining any questions you may have with respect to the information in the data room, as we move forward in this process."[62]

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57 Exhibit R-024.
58 Exhibit R-025.
59 Exhibit R-025.
60 Exhibit R-026.
61 Exhibit R-029.
62 Exhibit R-028.

101. Exhibit R-027 is the ShareVault index, showing 566 documents organized in nine categories: Non-Clinical (34 documents); CMC: Product Quality (51 documents); Regulatory (17 documents); Corporate Quality (one document); Clinical (314 documents); Market-Commercial (21 documents); IP (23 documents); Publications (41 documents); and Corporate (64 documents).[63]

102. The Regulatory category had 17 documents – 15 relating to Health Canada, dating back to 2014, and two relating to the FDA.[64]

103. On 28 January 2021, a member of the Nuance team wrote to Antibe: "Our clinical team has checked the data room folders and realized there is no information regarding to phase 3 studies. Could you help to upload the phase 3 study information (protocols, status … etc) which is import for us to evaluate if the design and timeline are applicable in China."[65]

104. On 29 January 2021, Antibe responded: "Thank you for your question. I wanted to let you know that we had a discussion with Mark and Annie earlier this week about the diligence process. Mark had made a very helpful suggestion to gather all of the diligence questions from Nuance and send over to Antibe for response at once. We would very much appreciate this format, as our team would like to take this list and answer thoughtfully and fulsomely."[66]

105. On 3 February 2021, Nuance sent to Antibe a list of requests for information and documents:

> Our team have reviewed the material in the data room. Below is the list of additional data/document required to complete DD from our side. It would be great if you can help to provide the info by end of this week. Thanks.
>
> - Regulatory
>
> 1. Meeting minute of the End-of-phase 2 meeting minute
>
> 2. Risk management plan
>
> - Clinical

63 *See* Exhibit R-027; *see also* Exhibit C-079.
64 Exhibit R-027.
65 Exhibit R-031.
66 Exhibit R-031.

> 1. Protocols and timelines for 3 efficacy studies (study #1, #2, #3) and 2 GI safety studies (presented in the partnering presentation 2020.9 Page 14)
>
> 2. Asian population results and ethnic sensitivity in the completed studies
>
> 3. Plan number of Asian population to recruit in the proposed US or EU local studies
>
> 4. Protocol and timeline of the IND-opening Ph1 clinical AME study on metabolites
>
> 5. Plan to address the different exposure Naproxen displayed between female and male population after ATB-346 administered in Ph2B DRF study[67]

106. On 4 February 2021, Antibe responded to Nuance's questions and requests.[68]

107. In particular, on the AME Study, Antibe stated: "For the Canadian AME study submission is planned for April/May 2021 with study initiation late Q2 2021." And: "The Draft AME protocol has been added to ShareVault."[69]

108. As to the timeline for Phase 3, Antibe stated: "Assuming all goes accordingly, Antibe will be in a position to start the initial Phase 3 OA efficacy trial in H2 2021 and will be on an ambitious timeline to have the NDA submitted in 4Q 2024."[70]

### G. The Conclusion of the License Agreement in February 2021

109. On 9 February 2021, the Parties entered into the License Agreement.[71] Pursuant to Section 2.1 of the License Agreement, Antibe grants to Nuance an exclusive license to Develop and Commercialize the Drug in the Field in the Territory.

110. The Field is defined in Section 1 as "use for treatment of human disease conditions appropriate for NSAID use, including without limitation [OA], [RA], and [AS]."

111. The Territory is defined in Section 1 as "any or all (as applicable) of the following: the PRC, the Hong Kong Special Administrative Region of the PRC, the Macau Special Administrative Region of the PRC, and Taiwan …". Section 5.1 provides for a "non-refundable and non-creditable" upfront payment by Nuance to Antibe of US$ 20 million.

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67 Exhibit R-034.
68 Exhibit R-035.
69 Exhibit R-035.
70 Exhibit R-035 (emphasis omitted).
71 Exhibit C-007; Exhibit R-037.

Section 5.2 provides for development and commercial milestone payments, potentially up to US$ 80 million. Section 5.3 provides for royalties, including a royalty rate of 12.5% on net sales. Section 3.1 provides that, "[p]romptly after the Effective Date, the Parties will agree on a Development Plan for a Licensed Product in the Field in the Territory through the JDC."

112. On 19 February 2021, Nuance paid to Antibe the upfront payment of US$ 20 million.

### H. The Canadian AME Study & Nuance's Due Diligence

113. In parallel to the due diligence and negotiations leading to the conclusion of the License Agreement, the Canadian AME Study proceeded.

114. On 27 December 2020, Antibe filed the CTA for the proposed AME Study with Health Canada.[72] Health Canada had 30 days to approve to reject the CTA.[73]

115. On 19 January 2021, Health Canada wrote to Antibe, seeking additional information and expressing "serious concerns regarding the potential risk of liver related AEs [adverse events]/SAEs [serious adverse events] in the proposed Phase 1b health human study, despite the low(er) ATB-346 doses (75mg, 100mg, 125 mg, and 150 mg), given that this is the first study with a 28-day treatment duration."[74]

116. Health Canada specifically noted three points: (1) the "significance/relevance of the safety factor with respect to liver toxicity derived from most sensitive specie non-GLP minipig study is not clear"; (2) the "assessment of safety of the 150 mg dose in healthy humans is limited to a 7-day Phase 1 study. Liver AEs/SAEs have been observed at 250 mg administered for 14 days in healthy humans, and in patients with [OA] at 150 mg, 200 mg and 250 mg"; (3) "Continued dosing from Day 14-28 in the proposed 28-day study may increase the likelihood of a liver related AE/SAE. In both healthy human and OA patients treated for only 14 days, clinically significant elevation in transaminase (> 3x ULN) were observed during the post-treatment follow up period. Thus, the impact on the liver following 28 days of dosing, even at lower doses is not clear."[75]

117. On 21 January 2021, Antibe responded in detail to Health Canada.[76] Among other things: on point (1), it referred to an "ongoing 13-week study" of minipigs; on point (2), it stated that before the 150 mg dose can be administered, "all lower doses must have first been completed and the Principal Investigator plus the company Safety Physician/Monitor must agree that in the absence of any liver or other safety signals the 150 mg dose can be administered"; on point (3), it emphasized that "[a]ll subjects will be under around-the-clock

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72 Legault ¶ 53; Exhibit R-006.
73 Legault ¶ 54.
74 Exhibit C-035.
75 Exhibit C-035.
76 Exhibit C-036.

direct supervised care of study nurses and the in-house study physician during the entire 6 weeks of dosing/observation."[77]

118. On 22 January 2021, Antibe met with Health Canada, as reflected in draft minutes of 26 January 2021 put together by a regulatory consultant working with Antibe.[78] The draft minutes state:

> Dr. Alexa [of Health Canada] stated that the OCT [Office of Clinical Trials] agreed to have this meeting, not to discuss the file further, but to inform the sponsor about the regulatory decision based on the Information Request issued. The OCT cannot issue a favourable decision for this [CTA] at this time. A new review would need due to:
>
> - Health Canada would like to have the data on the on-going 13 week mini-pig study, given the results seen in the previous non-GLP 30-day Dose Range Finding (DRF) study in mini-pigs.
>
> - Proposed changes in the response are considered significant changes in the protocol design and therefore the protocol would require a full review.
>
> - Health Canada remain uncertain about the study duration of 28 days.
>
> Dr. Alexa offered to allow Antibe to withdraw the CTA by 11AM or a rejection would be issued. She also suggested that a pre-CTA meeting would be helpful to the sponsor before refiling the CTA, to discuss the study design regarding the safety signals regarding hepatic toxicity. … Antibe agreed to withdraw the CTA from review.[79]

119. Antibe proceeded to send a withdrawal letter by 11 am on the same day.[80]

120. On 10 February 2021, Antibe in a board update stated the following about the AME Study:

> - Our CTA (clinical trial application) file was considered (incorrectly) incomplete by Health Canada as our ongoing 13-week minipig tox study was referenced

77 Exhibit C-036.
78 Exhibit C-037.
79 Exhibit C-037.
80 Exhibit C-038.

> without providing data; we will provide the data and refile by mid-March
>
> - They expressed concern over liver enzyme elevations for longer durations; we will thus propose to conduct the AME study with a dose escalation design. They suggested we request a pre-CTA meeting, which we view as helpful
>
> - A ~120-day delay will result; this will only modestly impact our P3 plans, as Covid precludes an earlier start than the Fall. It might also modestly extend our partnering efforts, as we view the AME data as important in this regard)
>
> - We continue to feel as if the issue is manageable as the elevations are dose-dependent, only occur post-treatment, are highly correlated with known, easy to manage liver stressors (primarily acetaminophen) and have no clinical sequelae (effects) at 150 mg. We also think we are likely to be effective at lower doses (see next slide) where PK analysis indicates that elevations would be rare. Still, this is our main corporate risk[81]

121. In another slide showing a timeline, Antibe indicated in the board update that Phase 3 would begin in January 2022.[82]

122. Antibe scheduled a pre-CTA meeting for 20 April 2021 and, in advance of the meeting, shared on 19 March 2021 a pre-CTA meeting package with Health Canada.[83] On 9 April 2021, Health Canada shared advance feedback on the pre-CTA package.[84] As summarized by Antibe's regulatory consultant:

> Question #1 – they are suggesting a 14 day study with a 14 day follow up period.
>
> Question #2 – they are requesting you to consider 1. A separate dosing cohort for each dose level, 2. Liver stopping rules and 3. dose-escalation stopping rules with a Notification to be submitted if the dose escalation stopping rules are met.

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81 Exhibit C-040.
82 Exhibit C-040.
83 Exhibit C-047.
84 Exhibit C-039.

> Question #3 – they have various suggested changes to study design, inclusion/exclusion and subject monitoring, in addition to a list of prohibited medications.[85]

123. On 15 April 2021, Antibe wrote back to Health Canada. It confirmed that the suggested protocol revision recommendations offered by Health Canada in connection with Questions 2 and 3 were agreeable to Antibe and would be implemented. As to the suggestion of a 14-day study with a 14-day follow-up period in connection with Question 1, Antibe emphasized the need for and proposed to retain a 28-day administration period.[86]

124. On 20 April 2021, Antibe met with Health Canada for the pre-CTA meeting, as reflected in meeting minutes drafted by Antibe's regulatory consultant (also reflecting Health Canada's suggestions).[87] The focus of the meeting was the question of the length of the trial, in connection with Question 1.[88]

125. On 7 May 2021, Antibe submitted the revised CTA to Health Canada.[89] As noted in the "Revision History" section: "The protocol has been updated from Version 1.0 to Version 2.0 due to study design changes, including the age of the subjects, removal of a higher strength, and the addition of formal stopping criteria."[90]

126. Health Canada approved the revised CTA on 2 June 2021.[91]

127. The AME Study began in July 2021.[92]

128. On 21 July 2021, Antibe shared with Nuance the "final protocol for the AME study which is currently ongoing in Canada."[93]

129. On 29 July 2021, Antibe sought to amend the AME protocol, submitting a v3.0 including a naproxen comparator arm.[94]

130. As discussed further below, on 30 July 2021, the study hit the stopping criteria, and Antibe paused the AME Study.[95]

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85 Exhibit C-039.
86 Exhibit C-052.
87 Exhibit C-053.
88 Exhibit C-053.
89 Exhibit R-007.
90 Exhibit R-007.
91 Exhibit C-055.
92 Legault ¶ 62.
93 Exhibit R-043.
94 Exhibits C-062 & C-063.
95 Legault ¶ 63.

### I. The United States IND

131. On 26 February 2021, Antibe submitted its IND application to the FDA.[96] The IND application "was very extensive and included all clinical and non-clinical reports on the Drug, which formed the basis of the submission."[97]

132. On 17 and 19 March 2021, the FDA requested further information on the application, and suggested including stopping criteria and additional lab tests.[98]

133. Antibe responded to the FDA on 19 and 23 March 2023, agreeing with the FDA's suggestions.[99]

134. On 29 March 2021, the FDA cleared Antibe's IND application for the Drug.[100]

135. In June-July 2021, Antibe conducted its initial US-based clinical study. No adverse event occurred.[101]

### J. From the Conclusion of the License Agreement to the Dispute

136. As noted above, on 9 February 2021, the Parties entered into the License Agreement.[102]

137. On 25 February 2021, Nuance wrote to Antibe, asking for various actions "[t]o kick-off the ATB-346 project in China as soon as possible."[103]

138. On 30 March 2021, the first Joint Development Committee ("**JDC**") meeting was held.[104]

139. Antibe and Nuance agreed that: the JDC would meet every second week of each quarter; the regulatory affairs ("**RA**") and medical teams from both sides would meet on a regular basis (bi-weekly/monthly); Antibe would provide updates on the latest progress of ATB-346; Antibe would need to provide download access to the data room; the parties would coordinate the first RA/medical meeting shortly.[105]

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96 Exhibit C-043.
97 Legault ¶ 64.
98 Legault ¶ 65; Exhibits C-045 & C-046.
99 Exhibits C-045 & C-046.
100 Exhibit C-018; *see* Legault ¶ 66.
101 *See* Legault ¶ 67; Exhibit R-009.
102 Exhibit C-007; Exhibit R-037.
103 Exhibit C-042.
104 Exhibits C-014; C-049; R-038.
105 Exhibit R-038.

140. Antibe shared draft minutes of the first JDC meeting on 2 April 2021, and followed-up on 11 April 2021, seeking to arrange an RA meeting soon, and requesting the latest update on ATB-346 as well as download access.[106]

141. The Parties agreed on a date for an RA/clinical meeting. Antibe followed-up on the request for download access on 21 April 2021.[107]

142. On 29 April 2021, Antibe asked Nuance to provide a summary of documents for which they required downloadable access. Nuance responded:

> At this stage, we'd need to download
>
> - all initial IND dossiers,
> - Briefing book,
> - all phase I- Phase III protocols, and
> - all interaction files with FDA/EMA or othe[r] authority including (but not limited) EOP2 meeting dossiers, all FDA responses/comments. etc.
> - In addition, all CMC validation reports, all individual preclinical reports, and all CSRs of phase I & Phase II which have already completed so far are requested as well.
>
> Besides those documents, would you please share with us the current stage and next plan especially the timeline and strategy. We can then initiate the registration strategy, pathway and timeline of China accordingly. And the check list of documents for pre-IND and IND submission will be [definitely] created based on the regulatory strategy later on.[108]

143. On 5 May 2021, Antibe provided download access to the data room. Antibe stated that "[w]ith respect to the IND dossier, we are working on a way to be able to share this with you, as it is a very large document."[109]

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106 Exhibit C-008.
107 Exhibit C-008.
108 Exhibit C-008.
109 Exhibit R-039.

144. The RA/clinical subcommittee meeting took place on 12 May 2021.[110] Both sides made presentations.[111]

145. On 19 July 2021, the second JDC meeting took place.[112]

146. As noted above, on 21 July 2021, Antibe shared with Nuance the "final protocol for the AME study which is currently ongoing in Canada."[113]

147. On 30 July 2021, the AME Study hit the stopping criteria, and Antibe paused the AME Study.[114]

148. On 3 August 2021, Antibe issued a press release disclosing that the AME Study was placed on a required pause because a pre-specified safety threshold was exceeded.[115] Later on the same day, Antibe emailed Nuance to share the news.[116]

149. On 11 August 2021, Antibe and Nuance met to discuss the pause of the AME Study.[117] The CEOs of Antibe and Nuance (as well as Ms. Lee) also had a separate call.[118]

150. On 5 September 2021, Nuance, through counsel, wrote to Antibe: "My client hereby terminates the License Agreement with immediate effect and demands immediate refund of the $20 million upfront fee it paid on February 19, 2021 with a $10 million damages."[119]

151. The Parties engaged in further exchanges and correspondence,[120] and the Claimant then filed its Notice of Arbitration in January 2022.

### K. Antibe's Continued Development of the Drug

152. On 14 October 2021, Antibe issued a press release, stating that "[i]n our comprehensive review, it became apparent that otenaproxesul's remarkable potency, GI protection and overall safety profile should be leveraged for acute pain use."[121]

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110 *See* Exhibits C-009 & R-040; *see also* Exhibit C-014.
111 Exhibits C-009 & R-040.
112 *See* Exhibits C-014 & C-059; *see also* Exhibit R-042.
113 Exhibit R-043.
114 Legault ¶ 63.
115 Exhibit C-019.
116 Exhibit C-013.
117 Legault ¶ 108; *see also* Exhibit C-064.
118 Legault ¶ 111.
119 Exhibit R-045.
120 *See* Exhibits R-048, R-049, R-050.
121 Exhibit R-051.

153. In a November 2021 board presentation, Antibe described this as "the strategic pivot": "Otenaproxesul for acute (vs chronic) pain."[122] At the same time, Antibe maintains that it "has not abandoned its plans to develop the Drug for long-term use."[123]

154. Mr. Legault in his witness statement and at the hearing provided evidence on the latest developments and Antibe's plans for the Drug.[124] According to Mr. Legault, "Antibe is relying on [the US$ 20 million upfront payment] to conduct its Phase 3 testing of the Drug and bring it forward for regulatory approval in the USA and Canada. Without the money, Antibe will not be able to develop and commercialize the Drug."[125]

## IV.

## THE WITNESS EVIDENCE

155. In this proceeding, the Claimant submitted three statements or opinions from witnesses, and the Respondent submitted four statements or opinions from witnesses.[126] Each of the seven witnesses testified and was examined at the hearing.

156. In this section, the Tribunal provides an overview of the witness evidence.

### A. The Claimant's Witnesses

#### 1. Mr. Mark G. Lotter

157. The Claimant submitted a witness statement of Mr. Mark G. Lotter dated 24 March 2023.[127]

158. Mr. Lotter is the founder and Chief Executive Officer of the Nuance group, which comprises the Claimant.[128]

159. In his witness statement, Mr. Lotter addresses: the screening and evaluation of the Drug and of the Respondent by the Claimant's Board; the JDC Meetings and the Drug's development plan in China; the termination of the AME Study and the Respondent's pivot to acute pain thereafter; the importance of the regulatory correspondence that the Respondent had withheld from the Claimant; and the loss that the Claimant alleges to have suffered as a result of the Respondent's alleged wrongful conduct.[129]

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122 Exhibit C-066.
123 Legault ¶ 145.
124 *See* Legault ¶¶ 129–147; *see also* Tr. (4) 181–182, 183–186 (Mr. Legault).
125 Legault ¶ 147.
126 *See* Tr. (1) 90:11–92:21 (Respondent's Opening) (providing overview of the Respondent's witness evidence).
127 *See generally* Witness Statement of Mr Mark G. Lotter, 24 March 2023 ("Lotter").
128 Lotter ¶ 1.
129 *See* Lotter ¶ 12.

160. At the hearing, Mr. Lotter testified, was examined, and answered the Tribunal's questions on 8 and 9 May 2023.[130]

### 2. Dr. Cathleen Chan

161. The Claimant submitted a witness statement of Dr. Cathleen Chan dated 29 March 2023.[131]

162. Dr. Chan is the Managing Director, Regulatory Affairs, Joint Value Creation, of CBC Group, which is the controlling shareholder of the Claimant.[132]

163. In her witness statement, Dr. Chan sets out her opinion on the significance of the regulatory authorities' opinion in the drug development process and whether this may differ from the sponsors' own assessment; whether the liver safety results of the Drug in the presented data, without the regulatory authorities' feedback, is sufficient for an assessment of the potential/risks in respect of the Drug's approval, development and/or commercialization; and whether the changes introduced to the AME Protocol (v1.0) dated 16 December 2020 in the AME Protocol (v2.0) dated 30 April 221 in respect of the Drug are material changes.[133]

164. At the hearing, Dr. Chan testified, was examined, and answered the Tribunal's question on 9 and 10 May 2023.[134]

### 3. Ms. Annie Lee

165. The Claimant submitted a witness statement of Ms. Annie Lee dated 24 March 2023.[135]

166. Ms. Lee is the Managing Director of CBC Group, the controlling shareholder of the Claimant. From late 2020 to October 2021, she was also the Chief Operating Officer of the Claimant.[136]

167. In her witness statement, Ms. Lee addresses the circumstances leading up to the conclusion of the License Agreement (including the Claimant's due diligence), the conclusion of the License Agreement, the period post-signing of the License Agreement, the termination of the AME Study and the Respondent's pivot to acute pain, the Claimant's discovery that the Respondent withheld regulatory correspondence, and the Claimant's alleged loss.[137]

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130 *See generally* Tr. (1) 147–204 (Mr. Lotter), (2) 4–170 (Mr. Lotter).
131 *See generally* Witness Statement of Ms Cathleen Chan, 29 March 2023 ("Chan").
132 Chan ¶ 1.
133 Chan ¶ 8.
134 *See generally* Tr. (2) 171–203 (Dr. Chan); (3) 4–35 (Dr. Chan).
135 *See generally* Witness Statement of Annie Lee, 24 March 2023 ("Lee").
136 Lee ¶¶ 1–2.
137 *See generally* Lee.

168. At the hearing, Ms. Lee testified, was examined, and answered the Tribunal's questions on 10 May 2023.[138]

### B. The Respondent's Witnesses

#### 1. Ms. Ella Korets-Smith

169. The Respondent submitted a witness statement of Ms. Ella Korets-Smith dated 14 April 2023.[139]

170. Ms. Korets-Smith has been the Vice President, Business Development for the Respondent since January 2018. She was the Respondent's relationship manager with the Claimant for the licensing deal for the Drug.[140]

171. In her witness statement, Ms. Korets-Smith describes the communications and meetings with the Claimant prior to and following the signing of the License Agreement.[141]

172. At the hearing, Ms. Korets-Smith testified, was examined, and answered the Tribunal's questions on 10 and 11 May 2023.[142]

#### 2. Mr. Daniel Legault

173. The Respondent submitted a witness statement of Mr. Daniel Legault dated 13 April 2023.[143]

174. Mr. Legault is the Chief Executive Office of the Respondent.[144]

175. In his witness statement, Mr. Legault provides some background on the Drug and its development, and drug development in Canada and in the United States; discusses the introduction to the Claimant and the Claimant's due diligence; the work of the JDC, the Claimant's termination of the License Agreement, and the events following the Claimant's termination of the License Agreement; and addresses the ongoing development of the Drug.[145]

176. At the hearing, Mr. Legault testified, was examined, and answered the Tribunal's questions on 11 May 2023.[146]

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138 *See generally* Tr. (3) 36–136 (Ms. Lee).
139 *See generally* Witness Statement of Ella Korets-Smith, 14 April 2023 ("Korets-Smith").
140 Korets-Smith ¶¶ 6–7.
141 Korets-Smith ¶ 8.
142 *See generally* Tr. (3) 138–199 (Ms. Korets-Smith); (4) 1–66 (Ms. Korets-Smith).
143 *See generally* Witness Statement of Daniel Legault, 13 April 2023 ("Legault").
144 Legault ¶ 1.
145 *See generally* Legault.
146 *See generally* Tr. (4) 66–193 (Mr. Legault).

### 3. Dr. Jonathan P. Jarow

177. The Respondent submitted a witness statement of Dr. Jonathan P. Jarow dated 19 April 2023.[147]

178. Dr. Jarow is a licensed medical doctor, surgeon, consultant to FDA regulated companies, and former medical officer at the FDA.[148]

179. In his witness statement, Dr. Jarow provided some background information (including on drug development and interactions with regulators), and provided his opinion on a number of points, including: whether there was sufficient data in the data room to identify risks in respect of the Drug's potential for regulatory approval from the FDA; whether a regulator's feedback is necessary to assess the potential and risks of a drug in development and the significance of the FDA's recommendations to the Drug's potential for regulatory approval from the FDA; the extent to which it can accurately be predicted whether a drug that has completed Phase 2 of testing will ultimately receive regulatory approval from the FDA; what information should generally be obtained to assess the potential benefits and risks of a drug in development based on his own work in due diligence; the opinions stated in Dr. Chan's witness statement.[149]

180. At the hearing, Dr. Jarow testified, was examined, and answered the Tribunal's questions on 12 May 2023.[150]

### 4. Mr. Jeffrey Wayne

181. The Respondent submitted a witness statement of Mr. Jeffrey Wayne dated 18 April 2023.[151]

182. Mr. Wayne is an independent consultant. He has worked in the pharmaceutical industry for over 40 years.[152]

183. In his witness statement, Mr. Wayne provides some background information on drug licensing in the drug development industry; his opinion as to whether the due diligence conducted by the Claimant in respect of the Drug was adequate in the circumstances; his opinion as to whether the Claimant was entitled to presume that the Respondent would provide it with all relevant and material documents about the Drug for due diligence purposes prior to Nuance signing the License Agreement, without any request from the Claimant; his opinion as to whether the Respondent was required as part of the due diligence process prior to signing the License Agreement, to provide the Claimant with

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147 *See generally* Witness Statement of Jonathan P Jarow, MD, 19 April 2023 ("Jarow").
148 Jarow ¶ 1.
149 *See* Jarow ¶¶ 10–11.
150 *See generally* Tr. (5) 1–46 (Dr. Jarow).
151 Witness Statement of Jeffrey Wayne, B.SC., M.B.A., 18 April 2023 ("Wayne").
152 *See* Wayne ¶ 4.

certain regulatory communications; his opinion as to whether the Respondent was required, after signing the License Agreement, to immediately provide the Claimant with certain regulatory communications, or to provide those communications at all; his opinion as to when the Respondent was required to provide Licensor Regulatory Documentation to the Claimant.[153]

184. At the hearing, Mr. Wayne testified and was examined on 12 May 2023.[154]

## V.

## JURISDICTION AND ADMISSIBILITY

185. Section 11.10(a) of the License Agreement contains a broad agreement to arbitrate. It provides:

> Except as otherwise expressly provided herein, any dispute or claim arising out of or relating to this Agreement (except for any issues relating to the Development of the Products which must first be addressed as described under Section 4.2(b)), or to the breach, termination, or validity of this Agreement, will be resolved as follows: each Party shall discuss the matter and make reasonable efforts to attempt to resolve the dispute. If the Parties are unable to resolve the dispute, a Party may request that the Senior Officer of the Parties meet and attempt to resolve the dispute. Such meeting will occur within thirty (30) days of the written request. If the Senior Officers cannot resolve the dispute through good faith negotiations within sixty (60) days after such meeting, then the Parties will submit the dispute to binding arbitration before a single arbitrator using the arbitration procedures set forth under the international arbitration rules of the Singapore International Arbitration Centre ("**SIAC**"). Any hearing in the course of the arbitration shall be held in Singapore in the English language. The decision of the arbitrator shall be final and not subject to appeal. The arbitrator may apportion the costs of the arbitration, including the reasonable fees and disbursements of the parties, between or among the parties in such manner as the arbitrator considers reasonable. All matters in relation to the arbitration shall be kept confidential and subject to Article 7 (CONFIDENTIALITY AND NON-DISCLOSURE) to the full extent permitted by law, provided that either Party may disclose any such award or decision to the extent required to enforce such award or

153 *See* Wayne, Exhibit B.
154 *See generally* Tr. (5) 47–66 (Mr. Wayne).

> decision. No Person shall be appointed as an arbitrator unless he or she agrees in writing to be bound by such confidentiality obligations.[155]

186. The Parties do not contest, and the Tribunal finds, that the present dispute falls within the scope of the agreement to arbitrate in Section 11.10 of the License Agreement. Further, while the Respondent in these proceedings initially raised a jurisdictional objection, it then withdrew it.[156]

187. The Tribunal finds it has jurisdiction to hear and decide the present dispute.

188. The Parties have not raised any admissibility objection. The Tribunal sees no reason not to exercise her jurisdiction to hear and decide the present dispute. The Tribunal is satisfied that the pre-condition to arbitration in the arbitration agreement has been satisfied, in the light of the Respondent's withdrawal of its objection on that basis. Thus, the claims are admissible.

## VI.

## APPLICABLE LAW

189. The legal seat of the arbitration is Singapore.[157] Thus, the *lex arbitri* in this case is Singapore law. The SIAC Rules apply to this arbitration.[158]

190. Section 11.9 of the License Agreement provides: "This Agreement shall be governed and construed in accordance with the laws of the State of New York, USA, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction."[159]

## VII.

## THE PARTIES' ARGUMENTS ON THE MERITS AND THE TRIBUNAL'S DECISION

191. The dispute concerns the Claimant's allegations that the Respondent, *inter alia*: (*i*) made material misrepresentations and omissions pre-dating the conclusion of the License Agreement that induced the Claimant to enter into the License Agreement; (*ii*) made

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155 Exhibit C-007, License Agreement, Section 11.10(a).

156 *See* Letter from the Respondent dated 27 July 2022 ("Antibe has agreed to withdraw its motion with respect to the arbitrator's jurisdiction on the grounds that the Parties did not follow the dispute resolution procedure.").

157 *See* Procedural Order No. 1 ¶ 25.

158 *See* Exhibit C-007, License Agreement, Section 11.10(a); Procedural Order No. 1 ¶ 1.

159 Exhibit C-007, License Agreement, Section 11.9.

material misrepresentations and omissions post-dating the entry into the License Agreement that induced the Claimant to continue to perform it; (*iii*) materially breached the License Agreement, and (*iv*) caused the License Agreement to be entered into by mistake.

192. The Tribunal's analysis and decision is set out below, following a summary of the Parties' respective positions, which is based on the Parties' own articulation of their claims and defenses, and which is not intended to be exhaustive. The Tribunal has carefully reviewed and considered all of the arguments and evidence presented by the Parties and has taken them into account in arriving at her decision.

### A. Whether Antibe Fraudulently Induced and/or Fraudulently Concealed Material Matters, or Made Negligent Misrepresentations, Which Induced Nuance To Enter into the License Agreement

#### 1. The Claimant's Position

193. In connection with matters pre-dating the conclusion of the License Agreement, the Claimant advances three claims: fraudulent concealment, fraudulent inducement, and negligent misrepresentation.[160]

#### a. Legal Standard

194. *First*, according to the Claimant, under New York law, the elements of a fraudulent concealment claim are "(1) a duty to disclose material facts; (2) knowledge of material facts by a party bound to make such disclosures; (3) failure to discharge a duty to disclose; (4) scienter; (5) reasonable reliance; and (6) damages."[161]

195. *Second*, as to the elements of a fraudulent inducement claim, the Claimant says that they are the following: "(1) the defendant made a material, false representation; (2) the defendant intended to defraud the plaintiff thereby; (3) the plaintiff reasonably relied upon the representation; and (4) the plaintiff suffered damage as a result of such reliance."[162]

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160 *See* Claimant's Post-Hearing Brief ("Claimant's PHB") ¶ 99; Claimant's Opening Statement ("Hearing Opening Slide") 67; Statement of Reply ("Reply") ¶ 95; Statement of Claim ("Claim") ¶ 43; *see also* Notice of Arbitration ¶¶ 22–30.

161 Claimant's PHB ¶ 103; Hearing Opening Slide 67 (citing to CLA-004, *De Sole v. Knoedler Gallery, LLC*, 139 F. Supp. 3d 618, 640 (S.D.N.Y. 2015); emphasis omitted); *see also* Claim ¶ 48 ("A fraudulent concealment claim shares the same elements as a fraudulent inducement claim, but with an additional requirement that a plaintiff must show that the defendant had a duty to disclose the material information.") (citing to CLA-019, *Woods v. Maytag Co.*, 807 F. Supp. 2d 112, 119 (E.D.N.Y. 2011)); Tr. (1) 46:14–25 (Claimant's Opening).

162 Claimant's PHB ¶ 150; Hearing Opening Slide 67 (citing to CLA-019, *Woods v. Maytag Co.*, 807 F. Supp. 2d 112, 119 (E.D.N.Y. 2011)); *see also* Claim ¶¶ 44–47; Tr. (1) 46:14–25 (Claimant's Opening).

196. *Third*, according to the Claimant, the elements of a negligent misrepresentation claim under New York law are "(1) there exists a special relationship which imposes on the representor a duty to speak with care; (2) the representor knows or has reason to know that the information he provided is desired by the representee for a serious purpose; (3) the representor conveyed incorrect information; and (4) the representee reasonably relied on such information to his detriment."[163] The Claimant contends that, in the commercial context, a duty to speak with care arises where persons "possess unique or specialized expertise, or are in a special position of confidence and trust with the injured party so that it would be expected that the other party would justifiably rely on the statement."[164]

**b. Fraudulent Concealment/Misrepresentation**

197. The Claimant's case on this point has evolved in the course of this proceeding. The Claimant says that this is because the Respondent's acts were revealed through the disclosure process.[165]

198. In the Statement of Claim, paragraph 51, the Claimant focused on the following alleged express representations:

> a. The Drug has completed large Phase 2B studies for efficacy and gastrointestinal safety with strong results, and Phase 3 registration program initiation was expected in Q2 2021 […];
>
> b. Recent third-party studies have validated the Drug's commercial potential as an NSAID in the Chronic Pain Field […];
>
> c. Antibe considered the assumptions on which the forward-looking statements and information it provided regarding the Drug and its development are based to be reasonable […];
>
> d. Antibe believed that it had a reasonable scientific basis upon which it made statements of opinion or belief in respect of the Drug and its development […].[166]

199. In paragraph 52, the Claimant also focused on the following alleged implied representations:

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163 Claimant's PHB ¶ 157; Hearing Opening Slide 68 (emphasis omitted); *see also* Claim ¶ 49 (citing to CLA-022, New York Contract Law, ¶¶ 21.26–21.27).

164 Claimant' PHB ¶ 158; Hearing Opening Slide 68 (citing to CLA-022, New York Contract Law, ¶¶ 21.27–21.28; emphasis omitted); *see also* Claim ¶ 50; Tr. (1) 47:1–22 (Claimant's Opening).

165 *See* Hearing Opening Slide 70; Tr. (1) 47:23–49:2 (Claimant's Opening); *see also* Reply ¶ 11 ("It was only in November 2022 that Antibe was forced to disclose these material communications that it had previously concealed in the document production phase of the Arbitration").

166 Claim ¶ 51.

a. The Drug could / would be approved, developed and commercialised in the Chronic Pain Field […]. Corollary to this, the Drug could / would complete the AME Study and secure the relevant approvals from the FDA and Health Canada for the Drug to be developed and commercialised in the Chronic Pain Field […];

b. Antibe honestly believed and/or had reasonable grounds to believe that the Drug could / would be so approved, developed and/or commercialised […];

c. For the purposes of Nuance Pharma's due diligence, Antibe has provided all material information relating to the Drug and its development to Nuance Pharma […];

d. The information provided by Antibe to Nuance Pharma (including by way of the Data Room) relating to the Drug and its approval, development and/or commercialisation was when given, true, up-to-date, complete and accurate in all material respects, and Antibe has not omitted any matter / information, the omission of which would make such information untrue, inaccurate or misleading in any material respect, up to the time of the License Agreement. Antibe honestly held and/or had reasonable grounds for holding the intention to promptly notify Nunance Pharma if at any time Antibe becomes aware of any matter / information which results in or may reasonably result in any of the information disclosed being untrue, inaccurate or misleading in any material respect […];

e. Antibe was not aware of any matter / information which would or may reasonably adversely affect the Drug's approval, development and/or commercialisation in the Chronic Pain Field, including (*i*) completion of the AME Study; and (*ii*) securing the relevant approvals including from the FDA and Health Canada. If ay any time Antibe becomes aware of any such matter / information, Antibe honestly held and/or had reasonable grounds for holding the intention to promptly notify Nuance Pharma of the same […];

f. Antibe honestly held and/or had reasonable grounds for holding the intention to submit the Draft AME Protocol to Health Canada for approval […].[167]

[167] Claim ¶ 52.

200. According to the Claimant, these pre-License Agreement representations were false or incorrect.[168] *First*, the Claimant said that the Respondent "was admittedly aware of potential issues which could / would adversely affect the Drug's approval, development and/or commercialisation in the Chronic Pain Field prior and up to the conclusion of the License Agreement."[169] *Second*, the Claimant contended that the Respondent "could not have honestly believed and/or have reasonable grounds to represent that it intended to submit the Draft AME Protocol to Health Canada for approval as it knew or ought to have known that the Protocol was liable to material change in view of the Liver Toxicity Issue (as was indeed the case)."[170] *Third*, the Claimant argued that the Respondent "did not provide information (including by way of the Data Room) that was true, up-to-date, complete and accurate when given, and omitted material information which would or may reasonably affect the Drug's approval, development and/or commercialisation in the Chronic Pain Field."[171]

201. In the Statement of Reply, paragraph 96, the Claimant referred to paragraphs 51 and 52 of the Statement of Claim, and focused on the following alleged representations:

> a. The Drug has completed large Phase 2B studies for efficacy and gastrointestinal safety with strong results, and Phase 3 registration program initiation was expected in Q2 2021.
>
> b. Following from (a) above, Antibe was not aware of any matter that could or would reasonably adversely affect the Drug's Phase 3 of development.
>
> c. The information provided by Antibe to Nuance Pharma (including by way of the Data Room) relating to the Drug and its approval, development and/or commercialisation was when gven, true, up-to-date, complete and accurate in all material respects, and Antibe has not omitted any matter / information, the omission of which would make such information untrue, inaccurate or misleading in any material respect, up to the time of the License Agreement.
>
> d. Antibe honestly held and/or had reasonable grounds for holding the intention to promptly notify Nuance Pharma if ay any time Antibe becomes aware of any matter / information which results in or may reasonably result in any of the information disclosed being untrue, inaccurate or misleading in any material respect.

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168 Claim ¶ 54.
169 Claim ¶ 55; *see also id.* ¶¶ 56–58.
170 Claim ¶ 59.
171 Claim ¶ 60.

> e. Antibe was not aware of any matter / information which would or may reasonably adversely affect the Drug's approval, development and/or commercialisation in the Chronic Pain Field, including: (i) completion of the AME Study; and (ii) securing the relevant approvals including from the FDA and Health Canada. If ay any time Antibe becomes aware of any such matter / information, Antibe honestly held and/or had reasonable grounds for holding the intention to promptly notify Nuance Pharma of the same.[172]

202. The Claimant in the Statement of Reply reiterated that these alleged representations were false.[173] To show this, the Claimant also relied on the correspondence between the Respondent and Health Canada, "only produced **for the first time** through document production in this Arbitration."[174]

203. At the hearing and in its post-hearing brief, the Claimant articulated the fraudulent concealment claim as its primary claim,[175] focusing on the following alleged concealments of material facts:

> a. Antibe's Health Canada communications in January 2021, which reveal that Health Canada had "serious concerns" about LTEs and the AME Study's 28 day dosing period.
>
> b. The draft AME Protocol (v1.0) placed in the Data Room for due diligence purposes had effectively been rejected, and was not the version that would ultimately be submitted for Health Canada's approval (and in fact it was not).
>
> c. Due to Health Canada's concerns, Phase 3 trials would start (at the earliest) in January 2022, instead of H2 2021.[176]

204. The Claimant contended that the Respondent was under a duty to speak because there was a disparity of knowledge between the Parties, as the Respondent had "exclusive" knowledge of the regulatory communications, "which Nuance Pharma had no means of knowing about."[177]

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172 Reply ¶ 96; *see also id.* ¶¶ 97–100 (including argument at ¶ 100 that "[i]t is trite that under New York law, an actionable representation need not be express and may be implied by conduct.").

173 *See generally* Reply ¶¶ 101–108.

174 Reply ¶ 107 (emphasis in the original); *see also id.* ¶¶ 104–106.

175 *See* Hearing Opening Slide 67 ("Nuance Pharma's primary claim is for fraudulent **concealment** of material facts prior to entering into the license Agreement") (emphasis in the original); Claimant's PHB ¶ 99 ("Nuance's submission for its primary claim for fraudulent concealment").

176 Hearing Opening Slide 78 (emphasis omitted); *see also* Claimant's PHB ¶ 104.

177 *See* Hearing Opening Slides 91–93 (quotations at slides 92 & 93, emphasis omitted); Tr. (1) 67:24–69:11 (Claimant's Opening); *see also* Claimant's PHB ¶¶ 107–110.

205. Also at the hearing and in its post-hearing brief, the Claimant argued "alternatively" that the Respondent "made material misrepresentations," "by its statements and conduct":

> a. For the purposes of Nuance Pharma's due diligence, Antibe had provided all material information relating to the Drug and its development to Nuance Pharma.
>
> b. The information provided by Antibe to Nuance Pharma (including by way of the Data Room) relating to the Drug and its approval, development and/or commercialisation was when given, true, up-to-date, complete and accurate in all material respects, and Antibe had not omitted any matter / information, the omission of which would make such information untrue, inaccurate or misleading in any material respect, up to the time of the License Agreement
>
> c. Antibe honestly held and/or had reasonable grounds for holding the intention to submit the Draft AME Protocol v1.0 – the version placed in the Data Room on 4 February 2021 – to Health Canada for approval.[178]

206. As to its alternative claim for negligent misrepresentation, the Claimant contends that the Parties' relationship was "not a case of a single arms-length commercial transaction," as the Parties were contracting into a long-term relationship; and "information disparity between the parties rendered the licensing deal inherently unfair without disclosure."[179]

### c. Materiality

207. In the Statement of Claim, the Claimant stated that "[t]he information and documents for due diligence were meant to provide crucial and material information on the Drug's approval and development," and "[i]n particular, regulatory information and documentation … were key milestone information and documents that would most directly apprise Nuance Pharma of any potential adverse issues affecting the Drug's approval and development in the Chronic Pain Field."[180]

208. Similarly, in the Statement of Reply, the Claimant asserted that the "previously-concealed documents have revealed that Antibe was well aware at all times that there was a material risk that the Drug could / would not be approved, developed and/or

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178 Claimant's PHB ¶ 152; *id.* ¶¶ 153–154; Hearing Opening Slide 94 (emphasis omitted); *see also* Hearing Opening Slides 95–96 (discussing CLA-33, *Raiffeisen Bank International v. Asia Col Energy* [2020] EWHC 2602 (Comm)); Tr. (1) 69:12–71:22 (Claimant's Opening).

179 Claimant's PHB ¶ 159 (emphasis omitted).

180 Claim ¶ 27.

commercialised in the Chronic Pain Field due to the regulatory authorities' serious concerns arising from the Liver Toxicity issue."[181]

209. At the hearing, the Claimant argued that "[t]he concealed Health Canada communications were material."[182] The Claimant asserted that the Respondent itself in a board update identified Health Canada's concerns as its "main corporate risk."[183] It argued that "[r]egulatory authorities are the key decision makers in the drug development process"[184]; because the Parties contemplated that the Claimant would in-license the Drug by building on the Drug's development process in the United States and Canada, the Claimant needed to have complete and up-to-date regulatory information[185]; when the Claimant reviewed the data room, it focused on regulatory interactions[186]; the Respondent's subsequent communications with Health Canada in March-April 2021 confirm the materiality of the communications in January 2021, as they ultimately led to "material study design changes" to the AME Protocol.[187]

210. In its post-hearing brief, the Claimant argues that the facts "revealing / stemming from Health Canada's serious concerns … would have been important to a reasonable potential licensee."[188] The Claimant contends that (*i*) the Parties are agreed that potential licensees regard regulatory feedback to be important in assessing the risk of investing in a drug; (*ii*) Dr. Jarow's evidence shows that it was Health Canada's January 2021 communications that provided the first indication of an issue with duration (as opposed to dosage); and (*iii*) it was always understood that Nuance would leverage on the Drug's development in the United States and Canada in developing the Drug in China and therefore the delay to the Drug's development timeline would impact the Drug's development in China.[189]

**d. Scienter**

211. In the Statement of Claim and Statement of Reply, the Claimant asserted that the Respondent "could not have honestly believed" certain statements it made and "deliberately omitted" certain information from the due diligence process.[190]

212. At the outset of its arguments with respect to scienter at the hearing[191], the Claimant contended that the heightened pleading standard mandated by United States Federal

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181 Reply ¶ 11; *see also id.* ¶ 31.
182 Hearing Opening Slides 79–90; Tr. (1) 59:24–67:23 (Claimant's Opening).
183 Hearing Opening Slide 79 (quoting Exhibit C-040).
184 Hearing Opening Slide 80.
185 Hearing Opening Slide 81.
186 Hearing Opening Slides 82–83.
187 Hearing Opening Slides 84–90.
188 Claimant's PHB ¶ 106 (emphasis omitted).
189 Claimant's PHB ¶ 106; *see generally* Claimant's PHB ¶¶ 59–87.
190 *See, e.g.*, Claim ¶¶ 59–60; Reply ¶¶ 106, 116.
191 *See* Hearing Opening Slides 97–101; Tr. (1) 71:23–76:7 (Claimant's Opening).

Rule of Civil Procedure 9(b) is a procedural rule not applicable in the present proceeding.[192] It then argued that: (*a*) the concealments/misrepresentations were made by the Respondent with a view to concluding the License Agreement; (*b*) the Respondent's failure to provide the latest regulatory communications with Health Canada was "a deliberate omission" and "no explanation has been provided for this omission"; (*c*) the Respondent not only withheld the Health Canada communications but also "misleadingly represented that it planned to submit the draft AME Protocol (v1.0) to Health Canada in April/May 2021"; (*d*) the Respondent continued to conceal these material communications after the execution of the License Agreement; (*e*) the Respondent was motivated to enter into the License Agreement and obtain the US$ 20 million upfront payment quickly.[193]

213. In its post-hearing brief, the Claimant argues that Antibe possessed the requisite scienter (or intent to defraud).[194] The Claimant first refers to its detailed factual argument in section II.C of its post-hearing brief that "Antibe knowingly withheld from Nuance its latest, up-to-date [January 2021 communications with Health Canada ("**Jan 2021 HCA Communications**")], which it further covered up with misleading responses to Nuance's due diligence queries,"[195] and to its argument on materiality in section II.D.[196]

214. The Claimant avers that "Antibe has never once said in its pleadings or witness statements that its omission of the 3 Health Canada communications dating 19 to 22 Jan 2021 … was accidental."[197] According to the Claimant, "Antibe not only consciously omitted from the Data Room (only) the latest Jan 2021 HCA Communication, it then made positive but incomplete / partial disclosures."[198] The Claimant says that Antibe's own contemporaneous conduct from January up to July 2021 showed that Antibe attached importance to Health Canada's concerns.[199] The Claimant also relies on "Antibe's clear motivation – to move the licensing deal 'quickly to resolution' in order to secure the necessary funding for the Drug's continued development" and Antibe's "continued concealment of the relevant communications with Health Canada even after the parties had entered into the License Agreement" and more generally "Antibe's post-agreement conduct."[200]

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192 Hearing Opening Slide 97.

193 *See* Hearing Opening Slides 97–100; *see also id.* Slide 101 (addressing CLA-029, *Siegel v. Ford*, 2017 WL 4119654 (S.D.N.Y. 2017)).

194 Claimant's PHB ¶¶ 111–116.

195 *See generally* Claimant's PHB ¶¶ 27–58.

196 *See generally* Claimant's PHB ¶¶ 59–87.

197 Claimant's PHB ¶ 27 (emphasis in the original).

198 Claimant's PHB ¶ 112(a) (emphasis omitted).

199 Claimant's PHB ¶ 112(b).

200 Claimant's PHB ¶ 113 (emphasis omitted); *see also* Claimant's PHB ¶¶ 21–26 ("Antibe was keen to move and secure the licensing deal which would provide the necessary, valuable funding for the Drug's continued, expensive development").

215. Alternatively, the Claimant says that "scienter is also satisfied by recklessness" and that proof of scienter is not necessary "if the Tribunal only finds for negligent misrepresentation."[201]

### e. Inducement and/or Reasonable Reliance

216. In the Statement of Claim, the Claimant argued that it relied on the pre-License Agreement representations in arriving at its decision to enter into the License Agreement, and that "[i]f [the Claimant] knew the Representations were false …, it goes without saying that it would not have entered into any (much less a long-term) licensing relationship with Antibe, or forked up the hefty US$ 20 million upfront payment."[202]

217. In the Statement of Reply and at the hearing, the Claimant developed this argument and responded to the Respondent's arguments that the Claimant could not reasonably rely on the Respondent's representations.[203]

218. In response to the Respondent's argument that the Claimant is a sophisticated business party that had access to the information but failed to take advantage of that access, the Claimant contends that "the representee must have had the means to discover the truth to begin with."[204] According to the Claimant, this is reflected in New York law, which provides that a party may rely on representations where they relate to matters "peculiarly within the other party's knowledge" or where the truth is discoverable but only with "extraordinary effort or great difficulty."[205]

219. The Claimant contends, *first*, that it was impossible for it to have discovered the concealment or that the Respondent's representations were false, because the crucial information was exclusively in the Respondent's possession[206]; *second*, the Claimant did specifically request further regulatory communications but the Respondent "willfully withheld this information."[207] In other words, "[n]o amount of due diligence would have enabled Nuance Pharma to discover that Antibe had omitted material information from the Data Room."[208] *Third*, in any case, the Claimant did conduct sufficient due diligence.[209]

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201 Claimant's PHB ¶¶ 115–116.
202 Claim ¶¶ 68–69.
203 *See generally* Reply ¶¶ 109–122; Hearing Opening Slides 102–121; Tr. (1) 76:8–84:25 (Claimant's Opening).
204 Reply ¶ 112.
205 Reply ¶¶ 113–114 (collecting authorities at ¶ 114); *see also* Hearing Opening Slides 102–105.
206 Reply ¶¶ 116–119.
207 Reply ¶ 120; *see also* Hearing Opening Slide 109.
208 Reply ¶ 121; *see also* Hearing Opening Slides 106–108.
209 Reply ¶ 122; *see also* Hearing Opening Slides 110–121.

220. In its post-hearing brief, the Claimant argues that "Antibe's primary defence is … a red herring" as Nuance "could not have discovered the key concern identified in the (concealed) Health Canada Communications."[210]

221. In any event, the Claimant argues that Nuance did exercise reasonable due diligence in relation to LTEs generally.[211] The Claimant also specifically objects to what it characterizes as the introduction by the Respondent of new allegations and evidence on this point at the hearing.[212]

### f. Merger/Disclaimer Clauses in the License Agreement

222. The Claimant contends that the Respondent' reliance on Clause 8.5 (Disclaimer of Warranties) and Clause 11.12 (Entire Agreement) of the License Agreement is misplaced.[213] In its post-hearing brief, the Claimant asserts that these clauses in any event "do not deal with / have no effect on Nuance's claim for fraudulent concealment."[214]

223. As to Clause 11.12, the Claimant argues that such clauses "only operate where it has been shown that there is a valid enforceable written agreement, and such clauses would generally not preclude reliance on misrepresentations (whether fraudulent or negligent)."[215] The Claimant says that "[i]t is not seriously contested that Antibe cannot rely on this Clause."[216]

224. As to Clause 8.5, the Claimant contends that, *first*, it is qualified "[e]xcept as expressly set forth in the Agreement"[217]; and, *second*, generally-worded disclaimer clauses such as Clause 8.5 are insufficient to preclude reliance on misrepresentations (whether fraudulent or negligent) and cannot preclude reliance on misrepresentations concerning facts peculiarly within the defendant's knowledge.[218]

### g. Rescission of the License Agreement and/or Damages

225. The Claimant contends that it has suffered injury due to the pre-License Agreement representations, including (*a*) the US$ 20 million it paid to the Respondent after the conclusion of the License Agreement, (*b*) the incidental expenditures incurred in

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210 Claimant's PHB ¶ 119 (emphasis omitted); *see also id.* ¶¶ 117–123, 88–92.
211 *See generally* Claimant's PHB ¶¶ 124–148.
212 *See* Claimant's PHB ¶¶ 139–142.
213 *See generally* Hearing Opening Slides 122–124; Tr. (1) 85:1–14 (Claimant's Opening); Reply ¶¶ 124–129; Claim ¶¶ 61–67.
214 Claimant's PBH ¶ 160 (emphasis omitted).
215 Claim ¶¶ 63–64.
216 Hearing Opening Slide 122 (citing to Rejoinder ¶ 107, which only refers to Clause 8.5).
217 Hearing Opening Slide 123; Reply ¶ 125.
218 Claimant's PHB ¶¶ 161–162; Hearing Opening Slide 124; Reply ¶¶ 126–129; Claim ¶¶ 65–67.

performing the License Agreement, and (*c*) the opportunities lost as a result of the non-compete in Clause 2.9 of the License Agreement.[219]

226. The Claimant submits that, accordingly, it is "entitled to rescind the License Agreement so as to recover the sum of US$ 20 million it paid to Antibe and/or damages (to be assessed) for all incidental expenditure it incurred in performing the License Agreement."[220]

### 2. The Respondent's Position[221]

227. The Respondent submits that the Claimant's claims are fundamentally based in fraud and that the Claimant has failed to substantiate its fraud allegations.[222]

#### a. Legal Standard

228. The Respondent says that, to make out a claim for fraudulent inducement, the Claimant must show: "(a) that Antibe made a materially false representation, (b) that Antibe intended to defraud Nuance with that representation, (c) that Nuance reasonably relied upon the representation, and (d) that Nuance suffered damage as a result of such reliance."[223]

229. According to the Respondent, fraudulent concealment requires proof of the same elements, plus that the Respondent had a duty to disclose material information.[224]

230. The Respondent contends that negligent misrepresentation involves the same elements "with two modifications": there is "an additional requirement of a special relationship between the parties" and "the fraud scienter/intent requirement is replaced with a negligence standard."[225]

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219 Claimant's PHB ¶ 149; Reply ¶ 123; Claim ¶¶ 70–71.

220 Claim ¶ 71 (citing to CLA-024, Richard A. Lord, Williston on Contracts (4th ed. 2021), §69:47, §69:48, §69:61; CLA-020, New York Law of Torts, § 1.74).

221 The Tribunal notes footnote 63 of the Statement of Defence, in which the Respondent states: "Antibe assumes that the legal claims by Nuance outlined in the Statement of Claim, which are narrower than those outlined in its Notice of Arbitration, are its claims in this proceeding and therefore has not responded to any allegations contained in Nuance's Notice of Arbitration that are not contained in the Statement of Claim."

222 *See generally* Closing Submission of Antibe ("Respondent's PHB") ¶¶ 110–116; Rejoinder of Antibe ("Rejoinder") ¶¶ 65–75; *see also* Response ¶ 46.

223 Statement of Defence of Antibe ("Defence") ¶ 180 (citing to RL-001, *Baker-Rhett v. Aspiro AB*, 324 F. Supp. 3d 407, 418-19 (S.D.N.Y. 2018)).

224 Defence ¶ 181 (citing to RL-002, *Woods v. Maytag Co.*, 807 F. Supp. 2d 112, 119 (E.D.N.Y. 2011)).

225 Defence ¶ 182 (citing to RL-003, *DeBlasio v. Merrill Lynch & Co.*, 2009 WL 2242605, at *32 (S.D.N.Y. July 27, 2009)).

231. According to the Respondent, to pursue a claim for fraudulent inducement, fraudulent concealment or negligent misrepresentation under New York law, Nuance must meet the heightened pleading requirements of Federal Rules of Civil Procedure 9(b).[226]

**b. No Material Misrepresentations or Concealment by Antibe**

232. The Respondent defines a representation as "an assertion of a fact, which is given by one party to induce another party to enter into a contract or take some other action."[227] The Respondent says that it "did not make any representations to Nuance," and in the alternative that it did not make any misrepresentations or omissions.[228]

233. In response to the Claimant's list of alleged express representations at paragraph 51 of the Statement of Claim,[229] the Respondent contends that:

> (a) Antibe made no representation that the Drug would be approved, developed, or commercialized, at all, or in the Field or Territory, or in respect of its "commercial potential as an NSAID in the Chronic Pain Field". […]
>
> (b) The Corporate Presentation plainly did not comprise a representation by Antibe. The Corporate Presentation, as Nuance highlights in its Statement of Claim at paragraph 19(a), specifically included the following words: we "caution the reader that these assumptions regarding future events, many of which are beyond our control, may ultimately prove to be incorrect since they are subject to risks and uncertainties that affect us". […]
>
> (c) The Drug did complete its Phase 2B studies for efficacy and GI safety with strong results and, at the time, Antibe expected the Phase 3 registration program to be initiated in Q2 2021 (and regardless, this was not a representation by Antibe).
>
> (d) None of the information provided in the presentation slides … referred to in paragraph 19 of the Statement of Claim constitute representations by Antibe. […][230]

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226 Defence ¶ 183.
227 Defence ¶ 185.
228 Defence ¶¶ 186–187.
229 *See* Claim ¶ 51 (quoted at paragraph 196 above).
230 Defence ¶ 188; *see also id.* ¶ 189 ("Further and in the alternative, Antibe did in fact have reasonable grounds to believe and honestly believed any statements it made to be reasonable.").

234. In response to the Claimant's list of alleged implied representations at paragraph 52 of the Statement of Claim,[231] the Respondent contends that:

> (a) As stated previously, Antibe never made representations or promises to Nuance regarding the Drug's development or commercialization. Again, drug development is a highly risky field. While Antibe had reasonable grounds to and honestly believed the Drug could and would be approved, developed and/or commercialized, these did not constitute representations by Antibe.
>
> (b) Antibe further did not represent that it had provided Antibe with all material information related to the Drug. However, Antibe did provide all material information to Nuance […].
>
> (c) Antibe made no representations advising that its documents were "up-to-date" or "complete and accurate in all material respects" and never represented that it had not "omitted any matter" or any information. … Regardless, the information provided by Antibe was up-to-date, and complete and accurate. […]
>
> (d) Antibe made no representations in respect of completing the AME Study or securing relevant approvals, including from Health Canada or the FDA. […]
>
> (e) As noted above, Antibe had reasonable grounds for holding the intention to submit the AME Protocol to Health Canada. In fact, Antibe did submit the AME Protocol to Health Canada for approval on December 27, 2020. Regardless, this did not constitute a representation by Antibe.[232]

235. The Respondent in its post-hearing brief reiterates that "Antibe never made these or any other representations."[233]

236. The Respondent in any event denies the Claimant's assertions of falsity of the Respondent's statements.[234]

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231 *See* Claim ¶ 52 (quoted at paragraph 197 above).

232 Defence ¶ 190*; see also id.* ¶¶ 191 ("Further and in the alternative, a breach of an implied representation is not an actionable claim under New York law."), 192 ("Further and in the alternative, Antibe did in fact have reasonable grounds to believe and honestly believed any statements it made to be reasonable."); Rejoinder ¶ 92 ("there is no independent action for a 'breach of an implied representation' under New York law").

233 Respondent's PHB ¶¶ 157–160 (quotation at ¶ 158).

234 *See* Defence ¶¶ 193–194.

237. The Respondent reiterates the same points in the Rejoinder,[235] in response to the Claimant's identification of alleged misrepresentations in paragraphs 96–97 of the Reply.[236]

238. As to the fraudulent concealment claim, the Respondent notes that the Claimant must prove that there was a duty to disclose, that such duty arises "where one party possesses superior knowledge, not readily available to the other, and knows that the other is acting on the basis of mistaken knowledge," and that this requirement is not met in this case.[237] The Respondent reiterates the point in its post-hearing brief.[238] Further, according to the Respondent in its post-hearing brief: Antibe never concealed evidence, "Nuance just never asked for them."[239]

239. As to the negligent misrepresentation claim, the Respondent says that the Claimant must prove "a special relationship exists," and that whether a special relationship exists turns on "(1) whether the person making the representation held or appeared to hold unique or special expertise; (2) whether a special relationship of trust or confidence existed between the parties; and (3) whether the speaker was aware of the use to which the information would be put and supplied if for that purpose."[240] "Crucially," according to the Respondent, "the parties must enjoy a relationship of trust and reliance closer than that of the ordinary buyer and seller, and an arm's length business relationship is not enough."[241] The Respondent submits that there was no special relationship between the Parties.[242] It reiterates the point in its post-hearing brief.[243]

### c. No Materiality

240. In its post-hearing brief, the Respondent argues that the Jan 2021 HCA Communications were not material.[244] The Respondent contends, relying in particular on the evidence of Dr. Chan and Dr. Jarow, that "the documents that were material to assessing the

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235 *See* Rejoinder ¶¶ 86–88; *see also id.* ¶ 91 ("Nuance could have bargained for representations or warranties of particular issues, including the trajectory of the development of the Drug, if it wanted to. It chose not to.").

236 *See* Reply ¶¶ 96–97 (paragraph 96 quoted at paragraph 199 above).

237 Defence ¶¶ 197–198 (quoting RL-009, *Brass v. Am. Film Tech., Inc.*, 987 F.2d 142, 150 (2d Cir. 1993)); *see also* Rejoinder ¶¶ 89–90 ("there was no significant disparity of information between Nuance and Antibe, and Antibe did not have 'exclusive' knowledge and access to information").

238 Respondent's PHB ¶¶ 152–154.

239 Respondent's PHB ¶¶ 125–126.

240 Defence ¶ 199 (internal quotation marks omitted) (quoting RL-010, *Kimmell v. Schaefer*, 89 N.Y.2d 257, 264 (N.Y. 1996)).

241 Defence ¶ 199 (international quotation marks omitted) (quoting RL-012, *Fraternity Fund Ltd. v. Beacon Hill Asset Mgmt. LLC.*, 376 F. Supp. 2d 385, 411 (S.D.N.Y. 2005)).

242 Defence ¶ 200.

243 Respondent's PHB ¶¶ 155–156.

244 *See* Respondent's PHB ¶¶ 127–134.

Drug's risks were available in the Data Room" and that Nuance "did not need the January 2021 Health Canada communications to know or understand this information."[245]

241. And the Respondent contends that Antibe's other allegations of concealment are unfounded or trivial.[246]

### d. No Scienter

242. As set out in further detail below, the Respondent says that the Claimant has neglected to adduce any facts on "the key element of fraud: intent/scienter."[247] The Respondent contends that the Claimant's "bare assertions of fraud" fail to support "any motive to deceive or manipulate" (the first prong of the test above), "beyond possibly implying generalized economic self-interest or securing profit," which the Respondent says is insufficient.[248] As to recklessness (the second prong of the test above), the Respondent contends that it is conduct that is "highly unreasonable and which represents an extreme departure from the standards of ordinary care," and that, again, the Claimant alleges no facts meeting that standard.[249] In its post-hearing brief, the Respondent contends that "Nuance has provided no evidence that Antibe intended to deceive Nuance" and "Nuance also has not established that Antibe had a motive to deceive Nuance."[250]

### e. No Reasonable Reliance

243. The Respondent contends that the Claimant "has not provided any evidence that it relied, reasonably or otherwise, on Antibe's alleged representations."[251] In its post-hearing brief, the Respondent argues that Nuance did not rely on regulatory communications.[252]

244. According to the Respondent, the Claimant is a "sophisticated industry professional" that "was obliged to do its own due diligence."[253] The Respondent highlights the following statement from *Grumman Allied Industries*: "Where sophisticated businessmen engaged in major transactions enjoy access to critical information but fail to take advantage of

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245 Respondent's PHB ¶¶ 127–134 (quotations at ¶¶ 128 & 134).
246 Respondent's PHB ¶¶ 141–145.
247 Rejoinder ¶ 93; *see also id.* ¶¶ 76–84.
248 Rejoinder ¶ 79 (citing to RL-057, *Prickett v. New York Life Ins. Co.*, 896 F. Supp. 2d 236, 246 (S.D.N.Y. 2012) ("However, a general profit motive, such as the motive to earn fees, is not a sufficient motive to commit fraud.").
249 Rejoinder ¶ 80 (quoting RL-058, *Barrett v. PJT Partners Inc.*, 2017 WL 3995606 (S.D.N.Y. Sept. 8, 2017) at 7).
250 Respondent's PHB ¶¶ 147–149 (quotations at ¶¶ 148 & 149 and emphasis in the original).
251 Defence ¶ 201 (emphasis omitted); *see generally id.* ¶¶ 202–208; Rejoinder ¶¶ 94–104; *see also* Tr. (1) 121:9–133:23 (Respondent's Opening) (addressing the Claimant's due diligence).
252 Respondent's PHB ¶¶ 135–137.
253 Defence ¶ 204.

that access, New York courts are particularly disinclined to entertain claims of justifiable reliance."[254]

245. The Respondent argues that the Claimant "was certainly in a position to acquire additional information, including by requesting information from Antibe, or by reviewing information that was available to the public."[255] The Respondent emphasizes that it was not responsible for the Claimant's due diligence.[256]

246. In the Rejoinder, the Respondent seeks to distinguish the cases on which the Claimant relied in the Statement of Reply.[257] The Respondent further submits that the Claimant's assertion that it conducted sufficient due diligence "alone negates its claims in respect of reasonable reliance."[258]

247. More generally, the Respondent faults the Claimant for conducting a deficient due diligence.[259] It argues the point in detail in its post-hearing brief.[260] In particular, the Respondent argues that Nuance failed to identify obvious safety and dose risks.[261]

248. In its post-hearing brief, the Respondent puts its argument on this point as follows:

> 4. Contrary to Nuance's assertions, [Nuance] did not require regulatory communications to identify and assess the risks associated with the Drug. The main risk associated with the Drug was liver toxicity, which was identified through [LTEs]. Antibe provided Nuance with all of the non-clinical and clinical study reports about the Drug in the Data Room and, even before then, had alerted Nuance in December 2020 to the LTEs seen in the most recent clinical study. Nuance's own witness, Dr. Cathleen Chan, testified that the LTEs documented in the Drug's most recent clinical study report alone should have been

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254 Defence ¶ 206 (quoting RL-015, *Grumman Allied Industries, Inc. v. Rohr Industries, Inc.*, 748 F.2d 729, 737 (2d Cir. 1984)) (emphasis omitted); *see also* Respondent's PHB ¶¶ 150–151.

255 Defence ¶ 207.

256 Defence ¶ 208; *see also* Respondent's PHB ¶¶ 119–120 ("Nuance was Responsible for Its Due Diligence").

257 *See* Rejoinder ¶¶ 95–104.

258 Rejoinder ¶ 94.

259 *See, e.g.*, Rejoinder ¶¶ 19 ("On December 23, 2020, after three ZOOM meetings, an exchange of corporate presentations, and some email correspondence, Nuance sent Antibe a draft term sheet and a deal proposal in which it offered to pay Antibe US$ 100 million plus a royalty …"), 38 ("Nuance has indicated that, in the course of the arbitration, it has provided all of the documents in its possession that are relevant to its due diligence. There are six documents in total.").

260 *See generally* Respondent's PHB ¶¶ 121–124, 56–64, 65–70.

261 Respondent's PHB ¶¶ 65–70.

a red flag for Nuance and would have been of particular concern to the Chinese regulator.

5. Ironically, the evidence demonstrates conclusively that Nuance was aware of the LTEs. It either failed to appreciate that the LTEs posed significant risks or chose to ignore the obvious risks and take a calculated risk that the Drug would succeed, and high rewards would follow. Dr. Chan testified she recognized the LTEs as a safety risk and that any doctor should have been able to do the same. Regulatory expert Dr. Jonathan Jarow testified there was another risk that was obvious from the data Antibe provided to Nuance at the start of its due diligence: that Antibe may not be able to find an 'effective' dose of the Drug—that is, a dose that was both efficacious and safe.

6. Nuance knew Antibe had not been able to identify an effective dose for 14-day use of the Drug. Unusually high liver enzyme elevations had been documented in all groups of study patients who had taken the Drug in the most recent clinical study, regardless of dose. The patients had taken the Drug for just 14 days. In order to have the Drug approved for chronic use, such as the osteoarthritis indication it was pursuing, Antibe would have to successfully complete a minimum 12-week study, with patients followed for a year after the study ended. There were real risks that even if Antibe could identify an effective dose for a 14-day period, that dose either would not be efficacious (because it was too low) or could cause serious liver toxicity (because the dose was too high, or the duration was too long) if administered over the duration required to get the Drug approved for a chronic condition indication.

7. Nuance never took any steps to understand the nature and extent of the risks related to the LTEs. It never asked Antibe a single question about the LTEs. The evidence suggests it did not obtain or review publicly available information on the significance of the LTEs, such as the naproxen label or Antibe's 2015 press release announcing it was pausing the Drug's clinical study because of LTEs. It never completely reviewed any of Antibe's clinical study reports.

8. Now, Nuance blames Antibe for its failure to obtain and review regulatory communications and, in particular, Antibe's January 2021 correspondence with Health Canada. Nuance also blames Antibe for its failure to recognize and assess the risks associated with the Drug. These failings are the direct result of

> Nuance's inadequate due diligence and Nuance alone is responsible for the consequences.[262]

### f. Antibe Can Rely on the Merger/Disclaimer Provision

249. The Respondent relies on the "merger clause" (the entire agreement clause at Clause 11.2 of the License Agreement) and the "disclaimer clause" (the representations and warranties clause at Section 8 of the License Agreement).[263]

250. The Respondent underlines that Clause 8.5 expressly disclaims any express or implied warranties of "fitness for a particular purpose."[264]

251. The Respondent contends that "[d]espite the lack of an explicit disclaimer of alleged representations that form the basis of a fraudulent inducement claim, courts may disregard a fraudulent inducement claim and give effect to a contract when sophisticated parties who negotiated at arms length could have easily protected themselves either through obtaining readily available information or alternatively including a protective clause in the agreement."[265]

### g. No Injury and Rescission Is Not Available

252. The Respondent submits that the Claimant has not alleged any injury: the Drug "was and remains a promising drug, it continues to be developed, it remains an effective NSAID for use in the Field, and Antibe remains committed to a partnership with Nuance in respect of the Drug."[266]

253. The Respondent further contends that, even if the Claimant had suffered injury, the Claimant's "crucial lack of due diligence" is a "direct intervening factor in said injury," breaking the causation chain.[267]

254. In its post-hearing brief, the Respondent argues that Nuance was not induced to enter into the License Agreement, and therefore there is no evidence that the alleged concealment "is linked to the alleged harm."[268] The Respondent points to the testimony of Mr. Lotter, which according to the Respondent demonstrates that Nuance would have entered into the License Agreement regardless of the January 2021 Health Canada communications.[269]

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262 Respondent's PHB ¶¶ 4–8.
263 Defence ¶ 233.
264 Defence ¶ 236; *see also* Rejoinder ¶ 107.
265 Defence ¶ 238; *see also* Respondent's PHB ¶¶ 161–162.
266 Defence ¶ 210; *see also* Rejoinder ¶ 105.
267 Defence ¶ 211.
268 Respondent's PHB ¶¶ 138–140.
269 Respondent's PHB ¶ 140 (citing to Tr. (2) 161:25 to 162:8 (Mr. Lotter)).

255. Thus, according to the Respondent, the Claimant is not entitled to rescission, repayment of the upfront payment it provided to the Respondent, or to any damages.[270]

### 3. The Tribunal's Analysis and Decision

#### a. Fraudulent Misrepresentation / Concealment

256. The Tribunal starts with what Claimant now characterizes as its primary claim for fraudulent concealment of material facts that induced Claimant into entering the Licensing Agreement[271] or fraudulent inducement based on Respondent's "material misrepresentations," "by its statements and conduct."[272]

257. For purposes of its fraudulent concealment claim, the Claimant places particular emphasis on the correspondence between the Respondent and Health Canada[273] and focuses on the following alleged concealments of material facts:

> a. Antibe's Health Canada communications in January 2021, which reveal that Health Canada had "serious concerns" about LTEs and the AME Study's 28 day dosing period.
>
> b. The draft AME Protocol (v1.0) placed in the Data Room for due diligence purposes had effectively been rejected, and was not the version that would ultimately be submitted for Health Canada's approval (and in fact it was not).
>
> c. Due to Health Canada's concerns, Phase 3 trials would start (at the earliest) in January 2022, instead of H2 2021.[274]

258. For purposes of its fraudulent misrepresentation/inducement claim, the Claimant focuses on the following alleged material misrepresentations/omissions:

> a. For the purposes of Nuance Pharma's due diligence, Antibe had provided all material information relating to the Drug and its development to Nuance Pharma.
>
> b. The information provided by Antibe to Nuance Pharma (including by way of the Data Room) relating to the Drug and

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270 Defence ¶ 212; *see also* Rejoinder ¶ 106.

271 *See* Hearing Opening Slide 67 ("Nuance Pharma's primary claim is for fraudulent **concealment** of material facts prior to entering into the license Agreement") (emphasis in the original); Claimant's PHB ¶ 99 ("Nuance's submission for its primary claim for fraudulent concealment").

272 *See, e.g.*, Claimant's PHB ¶ 152; *id.* ¶¶ 153–154; Hearing Opening Slide 67. Claimant's claim for negligent misrepresentation is made "alternatively." Hearing Opening Slide 67.

273 *See* Hearing Opening Slides 71–78; Tr. (1) 49:3–59:18 (Claimant's Opening).

274 Hearing Opening Slide 78 (emphasis omitted); *see also* Claimant's PHB ¶ 104.

> its approval, development and/or commercialisation was when given, true, up-to-date, complete and accurate in all material respects, and Antibe had not omitted any matter / information, the omission of which would make such information untrue, inaccurate or misleading in any material respect, up to the time of the License Agreement
>
> c. Antibe honestly held and/or had reasonable grounds for holding the intention to submit the Draft AME Protocol v1.0 – the version placed in the Data Room on 4 February 2021 – to Health Canada for approval.[275]

259. Under New York law, the elements of a fraudulent misrepresentation/ inducement claim, are the following: "(1) the defendant made a material, false representation; (2) the defendant intended to defraud the plaintiff thereby; (3) the plaintiff reasonably relied upon the representation; and (4) the plaintiff suffered damage as a result of such reliance."[276] The elements of a fraudulent concealment claim are "(1) a duty to disclose material facts; (2) knowledge of material facts by a party bound to make such disclosures; (3) failure to discharge a duty to disclose; (4) scienter; (5) reasonable reliance; and (6) damages."[277] A fraudulent concealment claim thus shares the same elements as a fraudulent inducement claim, but with an additional requirement that a plaintiff must show that the defendant had a duty to disclose the material information. On these points, the Parties appear to agree.[278]

260. With respect to the Claimant's claim of fraudulent misrepresentation / inducement, the Tribunal finds that the Respondent made misrepresentations and/or omissions leading up to the License Agreement, and that they were material. Importantly, the Claimant's allegations and evidence in this regard are not fairly characterized as just about the risks associated with LTEs or effective dosage with respect to the Drug, as Respondent argues[279], but rather the specific positions of regulatory authorities actively assessing the Drug as part of the ongoing regulatory review and approval process.[280] The Tribunal credits the

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275 Claimant's PHB ¶ 152; *id.* ¶¶ 153–154; Hearing Opening Slide 94 (emphasis omitted); *see also* Hearing Opening Slides 95–96 (discussing CLA-33, *Raiffeisen Bank International v. Asia Col Energy* [2020] EWHC 2602 (Comm)); Tr. (1) 69:12–71:22 (Claimant's Opening).

276 Hearing Opening Slide 67 (citing to CLA-019, *Woods v. Maytag Co.*, 807 F. Supp. 2d 112, 119 (E.D.N.Y. 2011)); see also Claimant's PHB ¶ 150; Claim ¶¶ 44–47; Tr. (1) 46:14–25 (Claimant's Opening).

277 Hearing Opening Slide 67 (citing to CLA-004, *De Sole v. Knoedler Gallery, LLC*, 139 F. Supp. 3d 618, 640 (S.D.N.Y. 2015); emphasis omitted); *see also* Claimant's PHB ¶ 103.

278 Hearing Opening Slide 67; Claim ¶ 48 (citing to CLA-019, *Woods v. Maytag Co.*, 807 F. Supp. 2d 112, 119 (E.D.N.Y. 2011)); Tr. (1) 46:14–25 (Claimant's Opening); Defence ¶ 181 (citing to RL-002, *Woods v. Maytag Co.*, 807 F. Supp. 2d 112, 119 (E.D.N.Y. 2011)).

279 *See, e.g.*, Respondent's PHB ¶¶ 4–8; Respondent's PHB ¶¶ 127–134.

280 Hearing Opening Slides 79–90; Tr. (1) 59:24–67:23 (Claimant's Opening).

evidence presented by the Claimant that the Respondent had "exclusive" knowledge of the regulatory communications, "which Nuance Pharma had no means of knowing about".[281]

261. Here, the positions taken by Health Canada vis-à-vis the Drug, and specifically its "serious concerns" expressed on 19 January 2021 in the context of the AME Study[282] were so significant that they: warranted a meeting between Antibe's top executives and Health Canada on 22 January 2021 during which Health Canada advised it "cannot issue a favorable decision" for Antibe's CTA "at this time" and "proposed changes in the response are considered significant changes in the protocol design"; caused the Respondent to withdraw its CTA the same day; and ultimately led to design changes to the AME Protocol that included the age of the subjects, removal of a higher strength, and the addition of formal stopping criteria.[283] Notably, the Respondent itself in an update to its Board identified Health Canada's concerns as its "main corporate risk".[284] The Tribunal also credits the Claimant's evidence, including the testimony of its witnesses, that the Parties contemplated that the Claimant would in-license the Drug in China by building on the Drug's development process in the United States and Canada[285], and thus complete and up-to-date regulatory information was a material consideration in entering into the Licensing Agreement.[286] Such consideration notably was echoed by the Respondent's own expert, Dr. Jarow, who conceded at the hearing that it was Health Canada's January 2021 communications that provided the first indication of an issue as to duration (as opposed to dosage),[287] and that as a general matter regulatory feedback is "very important".[288]

262. This takes the Tribunal to the Respondent's argument that the Claimant has failed to adduce facts sufficient to demonstrate "the key element of fraud: intent/scienter."[289]

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281 *See* Hearing Opening Slides 91–93 (quotations at slides 92 & 93, emphasis omitted); Tr. (1) 67:24–69:11 (Claimant's Opening); *see also* Claimant's PHB ¶¶ 107–110.

282 Exhibit C-035 (Health Canada's Request for Additional Information expressing "serious concerns regarding the potential risk of liver related AEs/SAEs in the proposed Phase 1b health human study").

283 *See, e.g.,* Exhibits C-037 & C-038; Hearing Opening Slides 84–90.

284 Exhibit C-040.

285 *See, e.g.*, Hearing Opening Slide 81; Claimant's PHB ¶ 106; *see generally* Claimant's PHB ¶¶ 59–87.

286 *See, e.g.*, Lotter ¶¶ 52 ("I have reviewed these documents and have no doubt that, if they had been disclosed to Nuance in the Data Room, these would have been flagged as regulatory / safety 'showstoppers' and I would not have recommended the licensing deal to the Board at the time, much less on the terms that were eventually agreed on."), 54 ("I can only surmise that Antibe must have known that these regulatory correspondence would have been red flags to Nuance Pharma as well [as] the Chinese regulatory authorities. Antibe therefore concealed them as it know (or was concerned) that, if these were disclosed, they would spook Nuance Pharma from the deal.").

287 Tr. (5) 41:14–42:5, 43:18–44:2 (Dr. Jarow).

288 Tr. (5) 15:12–16:8 (Dr. Jarow); *see* Claimant's PHB ¶ 3.

289 Rejoinder ¶ 93; *see also id.* ¶¶ 76–84.

Under New York law, the Claimant must adduce "clear and convincing evidence that the misrepresentations were made with the intent to deceive."[290]

263. The Respondent says that the Claimant must "give rise to a strong inference of fraudulent intent" by "alleging facts that 1) show that Antibe had both motive and opportunity to commit fraud, or that 2) constitute strong circumstantial evidence of conscious misbehavior or recklessness, and [the Claimant] must do so with respect to *each* alleged act or omission."[291] The Respondent contends that the Claimant's "bare assertions of fraud" fail to support "any motive to deceive or manipulate" (the first prong of the test above), "beyond possibly implying generalized economic self-interest or securing profit," which the Respondent says is insufficient.[292] As to recklessness (the second prong of the test above), the Respondent contends that it is conduct that is "highly unreasonable and which represents an extreme departure from the standards of ordinary care," and that, again, the Claimant alleges no facts meeting that standard.[293] According to the Respondent, Health Canada's "serious concerns" were "alleviated" and the Final AME Protocol was submitted to Health Canada in May of 2021 and was approved "with what was essentially an administrative change from the draft protocol submitted the previous December": "There was no material change."[294] In its post-hearing brief, the Respondent contends that "Nuance has provided no evidence that Antibe intended to deceive Nuance" and "Nuance also has not established that Antibe had a motive to deceive Nuance."[295]

264. As an initial matter, while the Tribunal agrees with the Claimant that the heightened pleading standard mandated by United States Federal Rule of Civil Procedure 9(b) is a procedural rule not applicable in the present proceeding[296], the cases adduced and addressed by both Parties that deal with the pleading standard are helpful in delineating the showing necessary to establish scienter under New York law. In this regard, the *Siegel v. Ford* case, cited by both Parties, is instructive.[297] In that case, the district court for the Southern District of New York rejected the respondent's motion to dismiss for failure to state a claim the plaintiffs' common law fraud claim under New York law. In finding that the plaintiffs had adequately pleaded scienter, the court found that "the allegations in the

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290 *See E-21 Glob., Inc. v. Second Renaissance, LLC*, 360 F. App'x 172, 175 (2d Cir. 2009) (cited to at Respondent's PHB ¶ 147 n. 181 (unnumbered legal authority submitted with Respondent's PHB)).

291 Rejoinder ¶ 78 (emphasis in the original) (quoting RL-053, *Tellabs, Inc. v. Makor issues & Rights, Ltd.*, 551 US. 308, 310, 334 (2007)); *see also* Defence ¶ 195.

292 Rejoinder ¶ 79 (citing to RL-057, *Prickett v. New York Life Ins. Co.*, 896 F. Supp. 2d 236, 246 (S.D.N.Y. 2012) ("However, a general profit motive, such as the motive to earn fees, is not a sufficient motive to commit fraud.").

293 Rejoinder ¶ 80 (quoting RL-058, *Barrett v. PJT Partners Inc.*, 2017 WL 3995606 (S.D.N.Y. Sept. 8, 2017) at 7).

294 Rejoinder ¶ 81; *see id.* at ¶ 82.

295 Respondent's PHB ¶¶ 147–149 (quotations at ¶¶ 148 & 149 and emphasis in the original).

296 Hearing Opening Slide 97.

297 CLA-029, *Siegel v. Ford*, 2017 WL 4119654 (S.D.N.Y. 2017); *see, e.g.*, Reply ¶¶ 117–118, Rejoinder ¶¶ 100–104.

complaint, when taken as true permit the inference that [the respondent] either knowingly or recklessly" engaged in misrepresentation.[298] The issue is factual in nature, centering on when an inference can be established that a defendant knowingly or recklessly misrepresented or failed to disclose a material fact.[299]

265. The *Meda* case[300], on which both Parties rely[301], is particularly analogous. In that case, the court applied New York law to dismiss the plaintiff's case after a bench trial on the basis that the plaintiff "did not establish" that the defendant's failure to place a certain drug pricing agreement that it had with the French government in the data room "was intentional or reckless."[302] Notably, the court found that the plaintiff "failed to show by clear and convincing evidence that anyone at [defendant company] knowingly or recklessly made any fraudulent misrepresentation or omissions" where, *inter alia*: the documentary and testimonial evidence adduced established that the defendant company's "executives in Minnesota put time and care into preparing what they reasonably believed to be truthful, conservative, and honest offering materials"; "[n]o European country's drug pricing agreements were in the data room, and [plaintiff] appears never to have noticed that absence"; and "there was no specific effort to hide a French drug pricing agreement." [303]

266. On the basis of the documentary and testimonial evidence presented—including in assessing the credibility of the testimony from the Parties' respective witnesses at the hearing—the Tribunal finds that the Claimant has met its burden to establish that Antibe acted with the requisite scienter under New York law with respect to its misrepresentations and omissions involving the correspondence and discussions with Health Canada.

267. As detailed further above, the following key events took place prior to the execution of the License Agreement:

- On 25 January 2021, Antibe opened the Data Room to Nuance, which included 17 regulatory documents, including 15 relating to Health Canada dating back to 2014. The Data Room did not include:

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298 CLA-029, *Siegel v. Ford*, 2017 WL 4119654 (S.D.N.Y. 2017) at *10 (emphasis added). *See also* the *Loreley* case, cited by the Claimant in its Post-Hearing Brief, which itself relies on a case from the New York Court of Appeal (the highest court in New York). CLA-044, *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec.*, LLC, 797 F.3d 160, 175 (2d. Cir 2015) ("Under New York law, Plaintiffs must ultimately prove that Defendants possessed 'knowledge of [their misstatements'] falsity' and 'an intent to induce reliance.'") (quoting *Eurycleia Partners, LP v. Seward & Kissel*, LLP, 12 N.Y.3d 553, 559 (N.Y. 2009)).

299 *See* CLA-004, *De Sole v. Knoedler Gallery, LLC*, 139 F. Supp. 3d 618, 641 (S.D.N.Y. 2015) ("Whether a given intent existed is generally a question of fact, appropriate for resolution by the trier of fact.") (internal quotation and citation omitted).

300 RL-052, *Meda AB v. 3M Co.*, 969 F. Supp. 2d 360 (S.D.N.Y. 2013).

301 *See, e.g.*, Rejoinder ¶¶ 69–73; Claimant's PHB ¶ 114.

302 RL-052, *Meda AB v. 3M Co.*, 969 F. Supp. 2d 360, 376 (S.D.N.Y. 2013).

303 RL-052, *Meda AB v. 3M Co.*, 969 F. Supp. 2d 360, 385–386 (S.D.N.Y. 2013).

- The 19 January 2021 correspondence sent the week before from Health Canada, in which Health Canada failed to approve the AME Study CTA that Antibe had filed on 27 December 2020[304] and instead sought additional information, raising "serious concerns regarding the potential risk of liver related AEs [adverse events]/SAEs [serious adverse events] in the proposed Phase 1b health human study, despite the low(er) ATB-346 doses (75mg, 100mg, 125 mg, and 150 mg), given that this is the first study with a 28-day treatment duration."[305]

- The 21 January 2021 detailed response from Antibe to Health Canada providing information on dosage and safety protocols.[306]

- Information relating to the 22 January 2021 meeting between senior executives of Antibe—including Daniel Legault, the Chief Executive Officer—and Health Canada, including draft minutes of 26 January 2021 put together by a regulatory consultant working with Antibe[307], which memorialize, among other things, that Health Canada took the position that (1) "The [Office of Clinical Trials] cannot issue a favourable decision for this [CTA] at this time"; (2) the "[p]roposed changes in the response are considered significant changes in the protocol design and therefore the protocol would require a full review"; and (3) Health Canada "offered to allow Antibe to withdraw the CTA by 11AM or a rejection would be issued".[308]

- Antibe accordingly sent a letter later that day on 22 January 2021 withdrawing the CTA.[309]

- On 28 January 2021, Nuance wrote to Antibe specifically to note the absence of phase three studies in the Data Room and requested that Antibe "help to upload the phase 3 study information (protocols, status … etc) which is import for us to evaluate if the design and timeline are applicable in China."[310]

- Antibe did not respond immediately, and instead suggested the next day (29 January) that Nuance "gather all of the diligence questions from Nuance and send over to Antibe for response at once. We would very much appreciate this format, as our team would like to take this list and answer thoughtfully and fulsomely."[311]

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304 Legault ¶ 53; Exhibit R-006.
305 Exhibit C-035.
306 Exhibit C-036.
307 Exhibit C-037.
308 Exhibit C-037.
309 Exhibit C-038.
310 Exhibit R-031.
311 Exhibit R-031.

- On 3 February 2021, Nuance sent to Antibe a list of requests for information and documents, including "Protocols and timelines for 3 efficacy studies (study #1, #2, #3) and 2 GI safety studies (presented in the partnering presentation 2020.9 Page 14)".[312]

- On 4 February 2021, Antibe responded to Nuance's questions and requests, and on the AME Study, Antibe stated: "For the Canadian AME study submission is planned for April/May 2021 with study initiation late Q2 2021." And: "The Draft AME protocol has been added to ShareVault."[313] Also on 4 February 2021, Antibe stated: "Assuming all goes accordingly, Antibe will be in a position to start the initial Phase 3 OA efficacy trial in H2 2021 and will be on an ambitious timeline to have the NDA submitted in 4Q 2024."[314]

- Five days later, on 9 February 2021, the Parties entered into the License Agreement.

- The next day, on 10 February 2021, Antibe updated its Board with information that while Antibe "continue[d] to feel as if the issue is manageable… Still, this is our main corporate risk", and because the AME Study was not yet approved, Phase 3 would be "modestly delayed" and begin in January 2022.[315]

268. In responding to specific questions from Nuance, the Respondent was already aware of the "serious concerns" raised by Health Canada, but did not provide the up-to-date information in its possession, and instead (*i*) omitted from the Data Room the most recent correspondence with Health Canada, even while prior correspondence with Health Canada and the FDA was included; and (*ii*) deliberately chose to put a version of the AME Protocol that had already been withdrawn on 22 January 2021, referring to it only as the "Draft AME protocol". Taken together, Antibe's response to Nuance's inquiry can only be characterized as being so incomplete as to be affirmatively and deliberately misleading, evincing conscious misbehavior and recklessness, rather than an intent to be truthful or honest. In addition, Antibe's report to its Board on 10 February 2021 belies the notion that the position of Health Canada on the AME Study was unimportant, such that this omission could have been inadvertent, as it was characterized to the Board as "still" the "main corporate risk" and the timing for the study initiation of January 2022 was inconsistent with the answer provided to Nuance just days earlier, on 4 February 2021. Also notable was the testimony of Antibe's Chief Executive Officer, Mr. Daniel Legault. As CEO, he was one of the senior executives who attended the meeting with Health Canada held on 22 January 2021[316] and throughout had direct knowledge of the events that resulted in Antibe withdrawing the AME Protocol to prevent receiving an official rejection from Health Canada[317]. He also drafted and presented

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312 Exhibit R-034.
313 Exhibit R-035.
314 Exhibit R-035 (emphasis omitted).
315 Exhibit C-040.
316 Tr. (4) 99:5–15 (Mr. Legault).
317 *See generally* Tr. (4) 99:5–119:20 (Mr. Legault).

to the Antibe Board the slide presentation updating the Board on the AME Protocol.[318] At the same time, he played a key role in the due diligence process, as one of the individuals who Ms. Korets-Smith testified she would go to for "regulatory communications, such as correspondence, meeting minutes" for purposes of the Data Room[319], and he specifically reviewed the response Antibe sent to Nuance with respect to the AME Study.[320] Mr. Legault clearly acknowledged the importance and potential materiality of the position of Health Canada vis-à-vis the Drug, conceding at the hearing that Health Canada communications were "naturally requested by other potential partners"[321] and testifying that if "Health Canada had issued a rejection on the merits of the CTA, or issued a decision that significantly affected the Drug's development time or costs, Antibe would have made that information public and informed Nuance."[322] His explanation of why the Health Canada communications were not placed in the Data Room—which as noted, involved circumstances in which Health Canada had advised that it would issue a rejection of the CTA absent Antibe's withdrawal—shifted at the hearing, from the position that "there was no deliberateness, we are just not turning our mind to it" and that the relevant correspondence "weren't left out. There was no request for it"[323], and later, "we did not think the correspondence was material from a public company point of view and we were in a due diligence process and if they want ongoing anything, they have to ask for it"[324], and ultimately "we are not going to provide you [Nuance] with anything unless you ask for it".[325] It was only on 21 July 2021 that Antibe shared with Nuance the "final protocol for the AME study which is currently ongoing in Canada"[326], and as noted, on 30 July 2021, the study hit the stopping criteria, and Antibe paused the AME Study[327], which fundamentally pivoted the development of the Drug towards an indication for acute (vs. chronic) pain.[328] As to motive to deceive, the Tribunal credits the Claimant's arguments and evidence as to Antibe's motivation to enter into the License Agreement in order to secure the necessary funding for the Drug's continued development, in circumstances where the Respondent admitted the development of the Drug could not go forward without Nuance's US$20 million upfront payment.[329]

269. With respect to the elements of reasonable reliance and damages, i.e., whether the fraudulent misrepresentation is linked to the alleged harm in that Nuance was induced to enter into the License Agreement, the Tribunal also credits the Claimant's arguments and evidence, including in circumstances reflecting the significance to Nuance of the Drug's

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318 Tr. (4) 118:15–119:2 (Mr. Legault).
319 Tr. (4) 7:1–8 (Ms. Korets-Smith).
320 Tr. (4) 20:11–25:7 (Ms. Korets-Smith); 64:5–66:14 (Ms. Korets-Smith); 134:7–16 (Mr. Legault).
321 Tr. (4) 133:14–16 (Mr. Legault); *see also* Tr. (3) 144:24–145:23 (Korets-Smith).
322 Legault ¶ 58; *see also* Tr. (4) 192:17–193:8 (Mr. Legault).
323 Tr. (4) 126:9–21, 129:11–130:1 (Mr. Legault).
324 Tr. (4) 132:5–18 (Mr. Legault).
325 Tr. (4) 133:2–5 (Mr. Legault).
326 Exhibit R-043.
327 Legault ¶ 63.
328 *See* Legault ¶¶ 129–133; Exhibit C-066, slide 4; Tr. (4) 176:13–177:7 (Mr. Legault); Exhibit C-095.
329 *See, e.g.,* Defence ¶ 274; Legault ¶ 147.

potential indication for chronic (vs. acute) pain and the development timeline as understood by Nuance when it signed the License Agreement.[330] The Tribunal also finds that the Claimant's reliance on the Respondent in this regard was reasonable as a matter of New York law, which provides that a party may rely on representations where they relate to matters "peculiarly within the other party's knowledge" or where the truth is discoverable but only with "extraordinary effort or great difficulty"[331], and Antibe's actions here did not put Nuance on notice of the "true nature" of the serious concerns expressed by Health Canada[332]. The Tribunal credits the Claimant's evidence that the Claimant did in fact review and request information on the regulatory communications and status of the pending studies[333] and that no amount of due diligence would have enabled Nuance Pharma to discover that Antibe had omitted/misled it with respect to key regulatory information from the Data Room in these circumstances[334], which undercuts the Respondent's argument and evidence that the Claimant could or should have done more in this regard.

270. Accordingly, and for the avoidance of doubt, the Tribunal also rejects the Respondent's arguments, *inter alia*, that the Claimant's alleged lack of due diligence breaks the causation chain and that Nuance, but for the fraudulent misrepresentation of the communications with Health Canada, would have nonetheless entered into the License Agreement.

271. Finally, with respect to the Respondent's argument that the License Agreement's "merger" or "disclaimer" clauses preclude relief here, the Tribunal credits the arguments and evidence of Claimant that Clause 8.5 (Disclaimer of Warranties) and Clause 11.12 (Entire Agreement) of the License Agreement do not affect Nuance's claim for fraudulent misrepresentation/inducement in entering into the License Agreement in the first place and do not preclude reliance on misrepresentations, especially for facts peculiarly within a Respondent's knowledge.[335]

272. Having found for the Claimant on its "Claim 1" with respect to its fraudulent misrepresentation / inducement claim, the Tribunal does not address the additional element of a duty to disclose for purposes of the Claimant's fraudulent concealment claim, nor the

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330 *See generally, e.g.*, Claimant's PHB ¶¶ 117–148.

331 *See, e.g.*, Reply ¶¶ 113–114 (collecting authorities at ¶ 114); *see also* Hearing Opening Slides 102–105.

332 Claimant's PHB ¶¶ 121–122 (discussing CLA-032, *CP Kelco U.S., Inc. v. Pharmacia Corp.*, 2002 U.S. Dist. LEXIS 19139 (D. Del. 2002)), 135.

333 *See generally* Reply ¶¶ 79–82, 122; *see also* Hearing Opening Slides 110–121.

334 *See, e.g.,* Reply ¶ 121; *see also* Hearing Opening Slides 106–108; Claimant's PHB ¶¶ 117–123, 88–92.

335 *See, e.g.*, CLA-040, *HealthNow N.Y., Inc. v. APS Healthcare Bethesda, Inc.*, 2006 U.S. Dist. LEXIS 13148 at *16–17 ("where the alleged misrepresentations supporting a claim of fraud arise from facts within the 'peculiar knowledge' of a party, even a specific disclaimer as to reliance on those representations does not bar a fraud claim") (internal quotations and citations omitted); *see also* Claimant's PBH ¶¶ 160–162; Hearing Opening Slides 122–124; Reply ¶¶ 126–129; Claim ¶¶ 65–67.

Claimant's alternative claims (Claims 2-4) for material breach of the License Agreement, unilateral mistake, or fraudulent concealment/fraudulent or negligent misrepresentations post-License Agreement.[336]

**b. Relief**

273. The Claimant seeks the following relief[337]:

a. A declaration that the License Agreement has been validly rescinded or is void or is terminated;

b. In the alternative to (a) above, rescission of the License Agreement or a declaration that the License Agreement is void or is terminated;

c. Return of the sum of US$20,000,000;

d. Further and/or in the alternative to (c) above, damages in the sum of US$20,000,000 in respect of Nuance's upfront payment plus Nuance's management time costs in negotiating for and performing the License Agreement, estimated to be US$101,500;

e. Interest;

f. Costs; and

g. Such further or other relief as the Tribunal deems fit.

274. The Respondent requests that the Tribunal[338]:

a. Dismiss Nuance's claim in its entirety on the grounds that it is without merit;

b. Order Nuance to pay Antibe's arbitration costs, including Antibe's representative's costs and expenses;

c. Order Nuance to pay interest on all of the above amounts as of the date these amounts were due, until the date of their effective payment; and

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336 *See* Claimant's PHB ¶¶ 98–101 (summarizing Claims 1 to 4).
337 Claimant's PHB ¶ 198; *see also* Reply ¶ 166; Hearing Opening Slide 139.
338 Statement of Defence ¶ 275.

d. Order any further and/or additional relief as the Tribunal may deem appropriate.

275. Under New York law, rescission of a contract is available in circumstances where "there is fraud or duress in the inducement of the contract, failure of consideration, inability to perform, or a breach of the contract so substantial that it defeats the object of the parties in making the contract."[339] Courts generally permit rescission of a contract only when it appears reasonably feasible to return the parties to their respective positions prior to the contract.[340] As explained in the leading treatise *Williston on Contracts*, one of the reliefs open to a defrauded party is "rescission of the fraudulent transaction and restoration of the situation that the parties occupied before the fraudulent transaction was entered into."[341]

276. Having found that Nuance has met its burden to establish its claim of fraudulent concealment / inducement, the Tribunal finds that the License Agreement has been validly rescinded by Nuance. The Claimant is therefore entitled to be put in the situation in which it would have been but for the conclusion of the License Agreement. On that basis, Antibe is ordered to return to Nuance the sum of US$20 million that represented Nuance's up-front payment to Antibe, plus interest, as discussed in the next section of this Award. Nuance also seeks to recover Nuance's management time costs in negotiating for and performing the License Agreement, estimated to be US$101,500. The Tribunal agrees with the Respondent's argument at the hearing[342] that the Claimant's estimate is too speculative and declines to award the Claimant's requested relief in this respect.

## VIII.

## INTEREST

### A. The Claimant's Position

277. The Claimant sets out its position on interest in its costs submission.[343]

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339 RL-037, *Creative Waste Mgmt., Inc. v. Capitol Envtl. Servs., Inc.*, 429 F. Supp 2d 582, 599, 606 (S.D.N.Y. 2006) (emphasis added); *see also* RL-046, *K.M.L. Laboratories Ltd. v. Hopper*, 830 F. Supp. 159, 163 (E.D.N.Y. 1993) ("Under New York law, a breach in a contract which substantially defeats the purpose of that contract can be grounds for rescission. Rescission is not permitted for a slight, casual or technical breach, but, as a general rule, only for such as are material and willful, or, if not willful, so substantial and fundamental as to strongly tend to defeat the object of the parties in making the contract.") (internal quotations and citations omitted).

340 RL-046, *K.M.L. Laboratories Ltd. v. Hopper*, 830 F. Supp. 159, 164 (E.D.N.Y. 1993) ("Courts generally permit rescission of a contract only when it appears reasonably feasible to return the parties to their respective positions prior to the contract.") (internal quotations and citations omitted).

341 CLA-024, Richard A. Lord, Williston on Contracts (4th ed.), Section 69:47 (Remedies for fraud and misrepresentations, generally).

342 *See* Tr. (3) 116:20–123:23 (Ms. Lee).

343 Claimant's Costs Submissions ¶¶ 24–29.

278. The Claimant submits that the Tribunal has the power to award pre-Award interest on the sums awarded pursuant to Section 20(1)(c) of the International Arbitration Act, and to award post-Award interest pursuant to Section 20(3) of the same act.[344]

279. According to the Claimant, interest falls to be determined by Singapore law as the law of the arbitral seat as it is a matter of procedure, and the default statutory rate in Singapore is 5.33% per annum.[345]

280. The Claimant seeks both pre-Award and post-Award interest on all sums awarded at the default rate of 5.33% per annum, from the date the Claimant's cause of action arose/costs were incurred.[346]

### B. The Respondent's Position

281. The Respondent stated its position on interest in its email of 20 July 2023, in the following terms: "Antibe agrees with Nuance that costs and damages ordered by the arbitrator should carry interest of 5.33% from the date of the award. Antibe disagrees that, in the circumstances of this case, pre-award interest should be ordered on costs or damages."[347]

### C. The Tribunal's Analysis and Decision

282. As the Claimant notes, the Tribunal has the power under the International Arbitration Act to award both pre-Award and post-Award interest. Further, pursuant to Article 32.9 of the SIAC Rules: "The Tribunal may award simple or compound interest on any sum which is the subject of the arbitration at such rates as the parties may have agreed or, in the absence of such agreement, as the Tribunal determines to be appropriate, in respect of any period which the Tribunal determines to be appropriate."

283. Here, while the Claimant seeks both pre-Award and post-Award interest and the Respondent only post-Award interest, both Parties agree on the applicable rate of interest. According to the Claimant, the applicable rate is "the default rate of 5.33% per annum."[348] And the Respondent says that "costs and damages ordered by the arbitrator should carry interest of 5.33% from the date of the award."[349]

284. In the light of the agreement of the Parties, the Tribunal will use a rate of interest of 5.33% per annum. The Claimant's position on the applicable rate, with which the Respondent agrees, is based on Order 17 rule 5(1)(b) of the Singapore Rules of Court 2021,[350]

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344 Claimant's Costs Submissions ¶¶ 24–25.
345 Claimant's Costs Submissions ¶ 26.
346 Claimant's Costs Submissions ¶¶ 27–29.
347 Email of 20 July 2023 from the Respondent to the Tribunal.
348 Claimant's Costs Submissions ¶ 27 (with respect to pre-Award interest); *see also id.* ¶ 29 ("same default rate" for post-Award interest).
349 Email of 20 July 2023 from the Respondent to the Tribunal.
350 *See* Claimant's Costs Submissions ¶ 26 n. 31.

which provides for "simple interest at 5.33% per year."[351] The Tribunal therefore orders simple interest.

285. As to pre-Award interest, the Tribunal agrees with the Claimant that pre-Award interest shall be awarded. The Tribunal has found that the Claimant validly rescinded the License Agreement and is entitled to be put back in the situation in which it would have been but for the conclusion of the License Agreement. In particular, on 19 February 2021, the Claimant made an upfront payment of US$ 20 million to the Respondent. The Claimant is entitled to the return of this sum. It is also entitled to pre-Award interest on this sum: but for the conclusion of the License Agreement, the Claimant would have been in possession of this sum from 19 February 2021 to the date of this Award and would have been in a position to earn interest on this sum.

286. Thus, the Tribunal awards pre-Award interest at the rate of 5.33% per annum, from 19 February 2021 to the date of this Award, on the US$ 20 million that the Respondent is ordered to return to the Claimant.

287. As to post-Award interest, the Parties argue in favor of post-Award interest, and the Tribunal concurs. The Tribunal sees no reason to depart from the rate of interest used for purposes of pre-Award interest. Thus, the Tribunal awards post-Award interest at the rate of 5.33% per annum, from the date of this Award to the date of full compliance with the Award, on all sums awarded under the Award.

## IX.

## COSTS

### A. The Claimant's Position

288. The Claimant submits that (*i*) in the event that the Tribunal finds that Nuance is substantially or wholly successful in this arbitration, costs should follow the event and Nuance should be awarded in full its legal costs and its share of the costs of the arbitration (US$ 1,200,811.55); (*ii*) in the event Nuance does not substantially or wholly succeed in this arbitration but the Tribunal determines that Antibe had concealed material information and/or made material misleading representations to Nuance, Nuance should be awarded its legal costs and its share of the costs of the arbitration incurred up to the completion of document production (US$ 444,728.75 and US$ 93,126.24), and save for the foregoing, the Parties should bear their own costs.[352] Annex 1 of the Claimant's costs submission contains a detailed schedule of costs and fees.[353]

289. The Claimant refers to Rule 35 of the SIAC Rules, which provides that, unless otherwise agreed by the Parties, the Tribunal shall specify in the Award the total amount of

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351 *See* Claimant's Costs Submissions, Annex 12.
352 Claimant's Costs Submissions ¶¶ 8(a)-(b), 30(a)-(b).
353 Claimant's Costs Submissions, Annex 1.

the costs of the arbitration, and their apportionment among the Parties; and to Rule 37, which further empowers the Tribunal to order in its Award that all or part of the legal or other costs of a party be paid by another party.[354]

290. The Claimant contends that "costs follow the event" is a starting point.[355] It says the rule may be displaced in some circumstances, leading the Tribunal to consider relative success and failure on specific issues.[356] The Tribunal should also consider the conduct of the Parties and the reasonableness of the costs claimed.[357]

291. The Claimant argues that it should be awarded its legal costs and its share of the costs of the arbitration in full, in the event that it wholly or substantially succeeds in the arbitration.[358] The Claimant submits that (*i*) its costs are highly reasonable considering the importance and significance of the dispute; (*ii*) its costs are also reasonable considering the number and complexity of the issues in dispute; (*iii*) it kept its legal costs as reasonably low as possible by staffing each phase of the arbitration appropriately; (*iv*) it offered discounts on its legal fees; (*v*) and its costs are reasonable "in view of Antibe's unreasonable conduct in the proceedings."[359]

292. The Claimant further argues that it should be awarded its legal costs and its share of the costs of the arbitration up to the document production phase in the event that it is partially successful in the arbitration, which was reasonably brought to uncover material information otherwise concealed by Antibe up to the document production phase.[360] This is on the basis that "Nuance had no option but to commence the Arbitration to uncover the truth" and that Nuance's claims were "deservedly brought."[361] According to the Claimant, in allocating post-document production costs, the Tribunal should take into consideration Antibe's "unreasonable conduct" in the arbitration.[362]

### B. The Respondent's Position

293. The Respondent submits that costs should be awarded on a full indemnity basis to the winner of the arbitration, but if Nuance is only partially successful and its fraud claims are dismissed, it ought not to be awarded more than 25% of its costs.[363]

294. The quantum of the costs sought by Antibe, set out in detail in Appendix A to its submission on costs, is as follows:

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354 Claimant's Costs Submissions ¶¶ 1–2.
355 Claimant's Costs Submissions ¶ 3.
356 Claimant's Costs Submissions ¶ 3.
357 Claimant's Costs Submissions ¶¶ 4–5.
358 Claimant's Costs Submissions ¶¶ 9–15.
359 Claimant's Costs Submissions ¶¶ 9–15.
360 Claimant's Costs Submissions ¶¶ 16–23.
361 Claimant's Costs Submissions ¶¶ 17–18 (emphasis omitted).
362 Claimant's Costs Submissions ¶ 23.
363 Costs Submissions of the Respondent ¶ 1.

(a) Legal fees in the amount of USD 1,641,163.21 (including [Harmonized Sales Tax or HST]);

(b) Disbursements in the amount of USD 258,698.68 (including HST); and

(c) Costs of the arbitration, being USD 144,855.55 (including HST);

(d) For a total of USD 2,044,717.44.[364]

295. The Respondent contends that the Tribunal's jurisdiction to award costs comes from the SIAC Rules (and in particular Rules 35 and 37), Procedural Order No. 1, and the arbitration agreement itself.[365]

296. The Respondent argues that the basic principle of costs is that costs follow the event.[366] The Respondent says that the Tribunal should take into account as factors the importance of the issues to the Parties, the causes of action in fraud, the merits of the Parties' case and the conduct of the Parties in the arbitration, as well as the reasonableness of the costs claimed.[367]

297. According to the Respondent, (i) Nuance's fraud claims were serious to Antibe; (ii) Nuance's fraud claims were unsubstantiated; (iii) Nuance's claims were unmeritorious; (iv) Nuance's conduct of the litigation prolonged the proceeding; and (v) Antibe conducted its case efficiently.[368]

298. As to its claimed costs, the Respondent submits that they were reasonable, proportionate and warranted, and that they are consistent with the reasonable expectations of the Parties.[369]

### C. The Tribunal's Analysis and Decision

299. Section 11.10 of the License Agreement provides that "[t]he arbitrator may apportion the costs of the arbitration, including the reasonable fees and disbursements of the parties, between or among the parties in such manner as the arbitrator considers reasonable."[370] Pursuant to SIAC Rule 35.1, "the Tribunal shall specify in the Award the total amount of the costs of the arbitration." Further, "the Tribunal shall determine in the Award the apportionment of the costs of the arbitration among the parties."

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364 Costs Submissions of the Respondent ¶ 2; *see also id.* ¶ 45; *id.* Appendix A.
365 Costs Submissions of the Respondent ¶¶ 5–8.
366 Costs Submissions of the Respondent ¶¶ 9–12.
367 Costs Submissions of the Respondent ¶ 13.
368 Costs Submissions of the Respondent ¶¶ 14–36.
369 Costs Submissions of the Respondent ¶¶ 37–44.
370 See Exhibit C-007, License Agreement, Section 11.10(a).

300. SIAC Rule 35.2 makes clear that the term "costs of the arbitration" includes (a) the Tribunal's fees and expenses; (b) SIAC's administration fees and expenses; and (c) the costs of any assistance reasonably required by the Tribunal. The Registrar determines the costs of arbitration in accordance with Rule 34.7 of the SIAC Rules as follows:

| **Tribunal's Fees & Expenses** | **SGD** |
|---|---|
| **Catherine Amirfar** | |
| Sole Arbitrator's Fees | 191,398.86 |
| Sole Arbitrator's Expenses | 30,043.80 |
| GST | N/A |
| **TOTAL TRIBUNAL'S FEES & EXPENSES** | **221,442.66** |
| | |
| **Administrative Secretary's Fees & Expenses** | **SGD** |
| **Romain Zamour** | |
| Administrative Secretary's Fees | 23,750.00 |
| Administrative Secretary's Expenses | 15,445.61 |
| GST | N/A |
| **TOTAL ADMINISTRATIVE SECRETARY'S FEES & EXPENSES** | **39,195.61** |
| | |
| **SIAC Fees & Expenses** | |
| Administration Fee | 46,644.35 |
| SIAC Expenses | 150.00 |
| **TOTAL SIAC ADMINISTRATION FEES & EXPENSES** | **46,794.35** |
| | |
| **TOTAL COSTS OF ARBITRATION** | **307,432.62** |

301. The Claimant and the Respondent paid SG$ 153,816.14 and SG$ 153,936.14 respectively, the deposits held by the SIAC towards these costs, and these deposits have been applied by the SIAC towards the costs of arbitration (with any balance amount refunded to the Parties in the same proportions as those in which the deposits were made pursuant to Rule 34.7 of the SIAC Rules).

302. SIAC Rule 37 further provides that the Tribunal "shall have the authority to order in its Award that all or a part of the legal or other costs of a party be paid by another party." Here, the total amount of legal or other costs is as follows:

(a) the Claimant claims US$ 1,025,374.12 in legal fees, as well as US$ 43,745.02 in disbursements.[371] The Respondent claims US$ 1,641,163.21 in legal fees, as well as US$ 258,698.68 in disbursements.[372]

(b) further costs relating to the transcription charges and charges for the hearing rooms at Maxwell Chambers: the Claimant claims US$ 6,885.21 (corresponding to S$ 9,099.00 using the exchange rate used by the Claimant[373]) (transcription charges) plus US$ 8,399.39 (corresponding to S$ 11,100.02 using the exchange rate used by the Claimant) (charges for hearing rooms at Maxwell Chambers)[374]; and the Respondent claims US$ 7,497.57 (as "Epiq") plus US$ 22,743.64 (as "Arbitrator"), plus "HST" (Harmonized Sales Tax).

303. The Tribunal now turns to the issue of the allocation of costs. The Parties agree that the baseline principle of allocation of costs is "costs follow the event." The Tribunal concurs. The Parties further agree that other factors are relevant, such as the conduct of the Parties and the reasonableness of the costs claimed. The Tribunal concurs on this as well.

304. Here, the Claimant has prevailed on its claim (fraudulent inducement leading to rescission of the License Agreement), and on its principal request for relief (return of the upfront payment under the License Agreement). The Tribunal considers that the costs claimed by both Parties are reasonable, in light of the complexity of the case and the serious nature of fraud allegations. The Tribunal further considers that both Parties behaved reasonably in the course of the proceedings, generally conducting litigation fairly and efficiently.

305. Thus, on balance, the Tribunal sees no reason to depart from the principle of "costs follow the event." The Tribunal therefore holds that the Respondent shall reimburse the Claimant for the Claimant's portion of the costs of the arbitration, namely SG$ 153,716.31.

306. The Tribunal further holds that the Respondent shall reimburse the Claimant for the totality of its legal fees (US$ 1,025,374.12), disbursements (US$43,745.02), US$ 6,885.21 in transcription charges paid for by the Claimant, and US$ 8,399.39 in charges for hearing rooms at Maxwell Chambers, paid for by the Claimant.

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371 Claimant's Costs Submissions, Annex 1.
372 Costs Submissions of the Respondent, Appendix A.
373 Claimant's Costs Submissions, Annex 1, at 1 n. 1.
374 Claimant's Costs Submissions, Annex 1.

## X.

## DISPOSITIF

307. For the reasons set forth above, the Tribunal:

(a) HOLDS that the present dispute is within the Tribunal's jurisdiction and that the Claimant's claims are admissible;

(b) DECLARES that the Claimant validly rescinded the License Agreement on the basis of the Respondent's fraudulent inducement of the Claimant to enter into the License Agreement;

(c) ORDERS the Respondent to pay to the Claimant US$ 20,000,000.00, representing the sum that the Claimant had paid to the Respondent as upfront payment under the License Agreement, plus pre-award simple interest on this sum at the rate of 5.33% per annum, from 19 February 2021 to the date of this Award;

(d) ORDERS the Respondent to pay to the Claimant SG$ 153,716.31, as reimbursement for the costs of the arbitration;

(e) ORDERS the Respondent to pay to the Claimant US$ 1,025,374.12, as the legal fees of the Claimant in the arbitration; US$ 43,745.02, as the disbursements of the Claimant in the arbitration; US$ 6,885.21 in transcription charges paid for by the Claimant; as well as US$ 8,399.39 in charges for hearing rooms at Maxwell Chambers, paid for by the Claimant;

(f) ORDERS the Respondent to pay to the Claimant, if the Respondent fails to pay in full within 7 business days the amounts set forth in paragraphs (c), (d), and (e) above, simple post-award interest on any outstanding amounts at the rate of 5.33% per annum, from the date of this Award to the date of full and complete payment; and

(g) DISMISSES all other claims or requests.

Tribunal: Ms. Catherine Amirfar

Dated: 27 February 2024
Seat of Arbitration: Singapore

This is **Exhibit "C"**
Referred to in the Affidavit of Scott Curtis
Affirmed remotely before me this 8th day of April, 2024

Dillon Gohil

A Commissioner for Taking Affidavits (or as may be)


**ANTIBE THERAPEUTICS INC.**

# UNAUDITED CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS

**For the Three and Nine Months ended December 31, 2023 and 2022**

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Financial Position**
**As at December 31, 2023 and March 31, 2023**
(Expressed in thousands of Canadian dollars)
(Unaudited)

| | December 31, 2023 | March 31, 2023 |
|---|---|---|
| | $ | $ |
| **ASSETS** | | |
| **Current** | | |
| Cash and cash equivalents | **11,339** | 6,755 |
| Term deposits *[note 4]* | **13,567** | 32,137 |
| Other receivables *[note 5]* | **1,546** | 1,655 |
| Prepaid expenses *[note 9]* | **1,643** | 999 |
| Total current assets | **28,095** | 41,546 |
| **Non-current assets** | | |
| Deferred contract costs | **1,283** | 1,283 |
| Deferred consideration receivable *[note 3]* | **632** | 1,380 |
| Intangible assets | **26,352** | 26,352 |
| Total non-current assets | **28,267** | 29,015 |
| **TOTAL ASSETS** | **56,362** | 70,561 |
| **LIABILITIES** | | |
| **Current** | | |
| Accounts payable and accrued liabilities | **2,794** | 2,764 |
| Total current liabilities | **2,794** | 2,764 |
| **Non-current liabilities** | | |
| Deferred revenue | **27,631** | 27,631 |
| Total non-current liabilities | **27,631** | 27,631 |
| **TOTAL LIABILITIES** | **30,425** | 30,395 |
| **SHAREHOLDERS' EQUITY** | | |
| Share capital | **141,607** | 141,489 |
| Common Share purchase warrants *[note 7(c)]* | **10,264** | 10,264 |
| Contributed surplus | **19,564** | 18,904 |
| Deficit | **(145,498)** | (130,491) |
| **TOTAL SHAREHOLDERS' EQUITY** | **25,937** | 40,166 |
| **TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY** | **56,362** | 70,561 |

Commitments and contingencies *[note 16]*

*(Signed) Daniel Legault* Daniel Legault, Director
*(Signed) Robert Hoffman* Robert Hoffman, Director

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Loss and Comprehensive Loss**
**For the Three and Nine Months Ended December 31, 2023 and 2022**
(Expressed in thousands of Canadian dollars, except share and per share amounts)
(Unaudited)

| | **Three months ended December 31, 2023** | Three months ended December 31, 2022 | **Nine months ended December 31, 2023** | Nine months ended December 31, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| **EXPENSES** | | | | |
| Research and development *[note 9]* | **2,303** | 2,231 | **9,362** | 9,917 |
| General and administrative *[note 10]* | **1,770** | 1,555 | **5,862** | 4,415 |
| Stock-based compensation *[notes 7 and 11]* | **442** | 809 | **778** | 2,357 |
| Selling and marketing *[note 12]* | **81** | 67 | **324** | 275 |
| Total expenses | **4,596** | 4,662 | **16,326** | 16,964 |
| **LOSS FROM CONTINUING OPERATIONS** | **(4,596)** | (4,662) | **(16,326)** | (16,964) |
| Finance income and related costs *[note 13]* | **(383)** | (457) | **(1,319)** | (909) |
| **NET LOSS FROM CONTINUING OPERATIONS** | **(4,213)** | (4,205) | **(15,007)** | (16,055) |
| **DISCONTINUED OPERATIONS** | | | | |
| Income (loss) from discontinued operations *[note 3]* | **-** | (111) | **-** | 128 |
| **NET LOSS AND COMPREHENSIVE LOSS** | **(4,213)** | (4,316) | **(15,007)** | (15,927) |
| **Basic and diluted loss per share** *[note 8]* | **(0.08)** | (0.08) | **(0.29)** | (0.31) |
| **Basic and diluted weighted average number of shares outstanding** *[note 8]* | **52,651,259** | 52,320,976 | **52,639,576** | 52,188,528 |

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Changes in Shareholders' Equity**
**For the Nine Months Ended December 31, 2023 and 2022**
(Expressed in thousands of Canadian dollars, except share amounts)
(Unaudited)

| | Number of Common Shares | Share capital | Common Share purchase warrants | Contributed surplus | Deficit | Total shareholders' equity |
|---|---|---|---|---|---|---|
| | | $ | $ | $ | $ | $ |
| Balance, March 31, 2022 | 52,099,276 | 139,547 | 10,264 | 18,038 | (111,016) | 56,833 |
| Shares issued for redeemed restricted share units *[note 7(b)]* | 369,533 | 1,318 | - | (1,318) | - | - |
| Stock-based compensation *[note 11]* | - | - | - | 2,357 | - | 2,357 |
| Net loss from continuing operations for the period | - | - | - | - | (16,055) | (16,055) |
| Income from discontinued operations | - | - | - | - | 128 | 128 |
| Balance, December 31, 2022 | 52,468,809 | 140,865 | 10,264 | 19,077 | (126,943) | 43,263 |
| Balance, March 31, 2023 | 52,617,092 | 141,489 | 10,264 | 18,904 | (130,491) | 40,166 |
| Shares issued for redeemed restricted share units *[note 7(b)]* | **48,335** | **118** | **-** | **(118)** | **-** | **-** |
| Stock-based compensation *[note 11]* | **-** | **-** | **-** | **778** | **-** | **778** |
| Net loss from continuing operations for the period | **-** | **-** | **-** | **-** | **(15,007)** | **(15,007)** |
| Income from discontinued operations | **-** | **-** | **-** | **-** | **-** | **-** |
| **Balance, December 31, 2023** | **52,665,427** | **141,607** | **10,264** | **19,564** | **(145,498)** | **25,937** |

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Cash Flows**
**For the Nine Months Ended December 31, 2023 and 2022**
(Expressed in thousands of Canadian dollars)
(Unaudited)

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| **OPERATING ACTIVITIES** | | |
| Net loss from continuing operations for the period | **(15,007)** | (16,055) |
| Income from discontinued operations *[note 3]* | **-** | 128 |
| Items not affecting cash: | | |
| Stock-based compensation *[notes 7 and 11]* | **778** | 2,357 |
| Accretion interest | **-** | (18) |
| Interest on capitalized lease payments | **-** | 4 |
| Loss on sale of Citagenix Inc. *[note 3]* | **-** | 98 |
| | **(14,229)** | (13,486) |
| Changes in non-cash balances: | | |
| Other receivables | **(18)** | 552 |
| Inventory | **-** | (239) |
| Prepaid expenses | **(644)** | 200 |
| Accounts payable and accrued liabilities | **30** | (208) |
| Deferred tax liability | **-** | 260 |
| Net change in non-cash balances | **(632)** | 565 |
| **Cash flows used in operating activities** | **(14,861)** | (12,921) |
| **INVESTING ACTIVITIES** | | |
| Purchase of term deposits | **(13,422)** | (38,125) |
| Redemption of term deposits | **31,992** | 26,299 |
| Sale of subsidiary net of cash sold | **875** | 559 |
| Purchase of equipment | **-** | (11) |
| **Cash flows provided by (used in) investing activities** | **19,445** | (11,278) |
| **FINANCING ACTIVITIES** | | |
| Lease payments | **-** | (78) |
| Increase in loan receivable | **-** | (1) |
| **Cash flows used in financing activities** | **-** | (79) |
| **Net increase (decrease) in cash and cash equivalents during the period** | **4,584** | (24,278) |
| Cash and cash equivalents, beginning of the period | **6,755** | 34,807 |
| **Cash and cash equivalents, end of the period** | **11,339** | 10,529 |

## 1. DESCRIPTION OF BUSINESS

Antibe Therapeutics Inc. (the "Company" or "Antibe") was incorporated under the *Business Corporations Act* (Ontario) on May 5, 2009. The Company's common shares (the "Common Share(s)") trade on the Toronto Stock Exchange under the symbol "ATE", and on the OTCQX market under the symbol "ATBPF."

The Company originates, develops and out-licenses new pharmaceuticals. Antibe's lead compound, otenaproxesul (previously known as ATB-346), combines a moiety that releases hydrogen sulfide with naproxen, an approved, marketed and off-patent, non-steroidal, anti-inflammatory drug. The Company's main objectives are to develop otenaproxesul by satisfying the requirements of the relevant drug regulatory authorities while also satisfying the commercial licensing objectives of prospective global partners. The Company has also established a development plan for its lead compound through to the end of Phase III human clinical studies for regulatory discussion purposes. Additionally, the Company continues to investigate other research projects as well as additional development opportunities.

The Company was also, through its wholly owned subsidiary, Citagenix Inc. ("Citagenix" or "CGX"), a seller of tissue regenerative products servicing the orthopaedic and dental marketplaces. Citagenix's portfolio consists of branded biologics and medical devices that promote bone regeneration. Citagenix operates in Canada through its direct sales force, and in the United States and internationally via a network of distributors. On November 1, 2022, the Company completed the sale of Citagenix to HANSAmed Limited (see note 3).

The address of the Company's registered head office and principal place of business is 15 Prince Arthur Avenue, Toronto, Ontario, Canada, M5R 1B2.

These unaudited condensed interim consolidated financial statements were authorized for issuance by the Board of Directors on February 13, 2024.

## 2. BASIS OF PRESENTATION

**(a) Statement of compliance** –

These unaudited condensed interim consolidated financial statements were prepared using the same accounting policies and methods as those used in the Company's audited consolidated financial statements as at and for the year ended March 31, 2023. These unaudited condensed interim consolidated financial statements have been prepared in accordance with International Accounting Standard 34, *Interim Financial Reporting*. Accordingly, these unaudited condensed interim consolidated financial statements do not include all the disclosures required for annual financial statements and should be read in conjunction with the annual consolidated financial statements of the Company as at and for the year ended March 31, 2023, which are available on SEDAR. Several amendments apply for the first time in 2023, but do not have an impact on the unaudited condensed interim consolidated financial statements of the Company. The Company has not early adopted any other standard, interpretation or amendment that has been issued but is not yet effective.

**(b) Consolidation –**

These unaudited condensed interim consolidated financial statements reflect the accounts of the Company and its previously wholly owned subsidiary, Citagenix.

Prior to November 1, 2022, the Company operated as two operating segments: Antibe (research and development of new pharmaceuticals) and Citagenix (a seller of tissue regenerative products servicing the orthopaedic and dental marketplaces). On November 1, 2022, the Company closed the sale of Citagenix.

The results of the operations of Citagenix in the comparative period are recorded within income (loss) from discontinued operations in the interim consolidated statements of loss and comprehensive loss (note 3).

All intercompany balances and transactions have been eliminated on consolidation.

## 2. BASIS OF PRESENTATION *(continued)*

### (c) Going concern –

The unaudited condensed interim consolidated financial statements have been prepared assuming that the Company will continue as a going concern. For the nine months ended December 31, 2023, the Company incurred a net loss from continuing operations of $15,007, had negative cash flows from operations of $14,861 and an accumulated deficit of $145,498.

Until such time as the Company's pharmaceutical products are patented and approved for sale, the Company's liquidity requirements are dependent on its ability to raise additional capital by selling additional equity, from licensing agreements of its lead compound, from proceeds from the exercise of stock options and Common Share purchase warrants or by obtaining credit facilities. The Company's future capital requirements will depend on many factors, including, but not limited to, the market acceptance of its products and services. No assurance can be given that any such additional funding will be available or that, if available, it can be obtained on terms favourable to the Company.

All of the factors above indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern, which assumes the Company will continue its operations for the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the ordinary course of business. Management's plans to address these issues involve actively seeking capital investment and generating revenue and profit from the commercialization of its products. The Company's ability to continue as a going concern is subject to management's ability to successfully implement this plan. Failure to implement this plan could have a material adverse effect on the Company's financial condition and financial performance.

If the going concern assumption were not appropriate for these unaudited condensed interim consolidated financial statements, then adjustments would be necessary to the carrying value of assets and liabilities, the reported revenue and expenses, and the classifications used in the interim consolidated statements of financial position. The unaudited condensed interim consolidated financial statements do not include adjustments that would be necessary if the going concern assumption were not appropriate.

### (d) Use of estimates –

The preparation of these unaudited condensed interim consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, if any, as at the date of the unaudited condensed interim consolidated financial statements, and the reported amounts of expenses during the reporting period. Actual results may vary from the current estimates. These estimates are reviewed periodically and, as adjustments become necessary, they are reported in income in the year in which such adjustments become known. Significant estimates in these unaudited condensed interim consolidated financial statements include the completeness of the accrual for research and clinical trial expenses, and accruals and inputs related to the calculation of stock-based compensation.

## 3. SALE OF CITAGENIX

On November 1, 2022, the Company completed the sale of its wholly owned subsidiary, Citagenix. The $6,500 transaction involves a guaranteed $3,500, and a further $3,000 subject to Citagenix achieving sales milestones over the three-year period following closing. On February 15, 2023, the agreement was amended to include an additional $1,000 of contingent consideration and a one-year extension, bringing the total consideration to $7,500. On November 1, 2023, the Company received the second of the four guaranteed payments of $875 from HANSAmed Limited. The fair value of the contingent consideration was determined to be $nil as of the date of the sale and $nil as of December 31, 2023. The present value of the deferred consideration was determined to be $2,255 as of the date of the sale and $1,581 as of December 31, 2023, using a discount rate of 8%.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 3. SALE OF CITAGENIX *(continued)*

The results of Citagenix for the three and nine months ended December 31, 2022 are included in the interim consolidated statements of loss and comprehensive loss as income (loss) from discontinued operations, and are presented below:

| | **Three months ended December 31, 2022** | **Nine months ended December 31, 2022** |
|---|---|---|
| | $ | $ |
| Revenue | 965 | 6,987 |
| Cost of goods sold | 379 | 3,945 |
| Gross profit | 586 | 3,042 |
| Expenses | 599 | 2,556 |
| Loss on sale of Citagenix | 98 | 98 |
| Income (loss) before tax from discontinued operations | (111) | 388 |
| Provision for income taxes | - | 260 |
| **Income (loss) from discontinued operations** | (111) | 128 |

## 4. TERM DEPOSITS

As at December 31, 2023, the Company held investments of $13,567 (March 31, 2023 – $32,137) in three separate Canadian currency guaranteed investment certificates having terms of six and twelve months. Interest rates range from 5.10% to 5.90%.

## 5. OTHER RECEIVABLES

| | **December 31, 2023** | March 31, 2023 |
|---|---|---|
| | $ | $ |
| SR&ED | **-** | 46 |
| Deferred consideration receivable *[note 3]* | **875** | 875 |
| Interest receivable | **435** | 508 |
| Harmonized Sales Tax receivable | **194** | 186 |
| | **1,504** | 1,615 |
| Employee advances *[note 6]* | **42** | 40 |
| | **1,546** | 1,655 |

## 6. RELATED PARTY TRANSACTIONS

Employee cash advances as at December 31, 2023 totalled $42 (March 31, 2023 – $40). Currently, the Company has one officer receiving cash advances.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 7. SHARE CAPITAL

### (a) Stock options –

On September 12, 2023, the Company granted options of 667,500 Common Shares with an exercise price of $0.56 per share to its directors, officers, employees, and certain consultants. The total fair value of these options, calculated using the Black-Scholes-Merton option pricing model ("BSM") is $224. All options are subject to a service condition: one third (1/3) of the options granted will vest on each of the first, second and third anniversaries of the grant date.

On September 12, 2023, the Company also granted 357,500 performance options with an exercise price of $0.56 per share to key senior executives. Vesting of these options is subject to the successful achievement of certain goals that are designed to reflect the successful execution of the Company's business plan and strategy. The estimated fair value of these performance options, calculated using the BSM, is $120. As at December 31, 2023, it was determined that the probability and timing of achieving the performance criteria was more likely than not and, as such, for the three and nine months ended December 31, 2023, $21 and $25, respectively, were expensed and included in contributed surplus.

The following is a summary of all options to purchase Common Shares that are outstanding as at December 31, 2023 and 2022, as well as details on exercise prices and expiry dates:

| | **Nine months ended December 31, 2023** | | Nine months ended December 31, 2022 | |
|---|---|---|---|---|
| | **Options** | **Weighted average price** | Options | Weighted average price |
| | | $ | | $ |
| **Balance, beginning of the period** | **1,430,112** | **1.83** | 1,274,435 | 2.93 |
| Granted during the period | **1,025,000** | **0.56** | 340,000 | 0.48 |
| Forfeited during the period | **(15,000)** | **5.50** | (57,412) | 3.34 |
| **Balance, end of the period** | **2,440,112** | **1.27** | 1,557,023 | 1.73 |

| **Number of options** | **Exercise price** | **Expiry date** |
|---|---|---|
| | $ | |
| 66,000 | 0.68 | January 11, 2024 |
| 80,500 | 6.60 | March 4, 2024 |
| 20,000 | 0.91 | November 15, 2024 |
| 36,000 | 1.40 | July 13, 2025 |
| 156,272 | 1.45 | March 9, 2026 |
| 687,000 | 2.00 | March 31, 2027 |
| 15,152 | 4.95 | April 11, 2028 |
| 4,188 | 4.00 | May 8, 2028 |
| 10,000 | 2.90 | March 11, 2029 |
| 340,000 | 0.48 | November 15, 2032 |
| 1,025,000 | 0.56 | September 12, 2033 |
| 2,440,112 | | |

The number of options exercisable as at December 31, 2023 is 1,149,282 and the weighted average exercise price of these options is $2.09.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 7. SHARE CAPITAL *(continued)*

The total fair value of options not yet recognized as an expense is $544.

For the three and nine months ended December 31, 2023, totals of $99 and $152, respectively (2022 – $11 and $16, respectively) related to stock options have been included within stock-based compensation in the interim consolidated statements of loss and comprehensive loss.

The following assumptions were used in the BSM to determine the fair value of stock options granted in the period:

| | **Nine months ended December 31, 2023** | Nine months ended December 31, 2022 |
|---|---|---|
| Weighted average risk-free interest rate | **3.69%** | 3.13% |
| Weighted average expected volatility | **119%** | 122% |
| Expected dividend yield | **-** | - |
| Weighted average expected life of options | **10 years** | 10 years |
| Weighted average share price | **$0.56** | $0.50 |
| Weighted average exercise price | **$0.56** | $0.48 |

**(b) Restricted share unit plan –**

The following is a summary of all restricted share units ("RSUs") for Common Shares that are outstanding as at December 31, 2023 and 2022:

| | **Nine months ended December 31, 2023** | Nine months ended December 31, 2022 |
|---|---|---|
| | **RSUs** | RSUs |
| **Balance, beginning of the period** | **3,537,265** | 2,438,445 |
| Redeemed during the period | **(48,335)** | (369,533) |
| Forfeited during the period | **-** | (5,083) |
| **Balance, end of the period** | **3,488,930** | 2,063,829 |

Based on the share price on the date of granting, the total fair value of RSUs not yet recognized as an expense is $105.

For the three and nine months ended December 31, 2023, totals of $343 and $626, respectively (2022 – $798 and $2,341, respectively) related to RSUs have been included within stock-based compensation in the interim consolidated statements of loss and comprehensive loss.

**(c) Common Share purchase warrants –**

On December 12, 2023, the Company announced that it is extending the expiry date (the "Warrant Extension") and amending the exercise price (the "Amended Exercise Price") of 6,485,706 Common Share purchase warrants ("Warrants") of the Company.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 7. SHARE CAPITAL *(continued)*

The Warrants, pursuant to the Warrant Extension, will expire on July 31, 2024 and, pursuant to the Amended Exercise Price, be exercisable into a Common Share of the Company at $1.50 per Common Share, as depicted in the table below:

| Issue date | Number of Warrants | Issued exercise price | Amended exercise price | Original expiry date | Amended expiry date | Effective date |
|---|---|---|---|---|---|---|
| August 13, 2019 | 748,555 | $1,80 | $1.50 | December 31, 2023 | July 31, 2024 | December 29, 2023 |
| June 30, 2020 | 2,373,401 | $1.80 | $1.50 | December 31, 2023 | July 31, 2024 | December 29, 2023 |
| February 24, 2021 | 3,363,750 | $7.50 | $1.50 | February 24, 2024 | July 31, 2024 | December 29, 2023 |

On December 16, 2023, the Toronto Stock Exchange provided final approval for the Warrant Extension and Amended Exercise Price with an effective date for the amendments of December 29, 2023.

The above amendment had no impact on the presentation of shareholders' equity since the Company's accounting policy is to not record an adjustment to shareholders' equity when the Warrants continue to be classified as equity under IAS 32.

None of the Warrants are held by insiders of the Company.

The following is a summary of all Warrants to purchase Common Shares that are outstanding as at December 31, 2023 and 2022, as well as details on exercise prices and expiry dates:

| | **Nine months ended December 31, 2023** | | Nine months ended December 31, 2022 | |
|---|---|---|---|---|
| | **Warrants** | **Weighted average price** | Warrants | Weighted average price |
| | | $ | | $ |
| **Balance, beginning of the period** | **6,485,706** | **1.50** | 7,389,166 | 6.31 |
| Expired during the period | **-** | **-** | (499,810) | 3.96 |
| **Balance, end of the period** | **6,485,706** | **1.50** | 6,889,356 | 4.83 |

| **Number of Warrants** | **Exercise price** | **Expiry date** |
|---|---|---|
| | $ | |
| 6,485,706 | 1.50 | July 31, 2024 |

## 8. LOSS PER SHARE

Basic loss per share is calculated by dividing the net loss attributable to common shareholders by the weighted average number of Common Shares outstanding during the period. All unexercised share options and Warrants were excluded from calculating diluted loss per share as the effect of their issuance would be anti-dilutive.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 9. RESEARCH AND DEVELOPMENT EXPENSES

The nature of the research and development expenses for the three and nine months ended December 31, 2023 and 2022, is summarized as follows:

| | **Three months ended December 31, 2023** | Three months ended December 31, 2022 | **Nine months ended December 31, 2023** | Nine months ended December 31, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Salaries and wages | **438** | 354 | **1,660** | 1,552 |
| Professional and consulting fees | **344** | 275 | **911** | 1,213 |
| Research and clinical trial costs | **1,521** | 1,594 | **6,791** | 7,144 |
| SR&ED rebate | **-** | 8 | **-** | 8 |
| **Total research and development expenses** | **2,303** | 2,231 | **9,362** | 9,917 |

Non-refundable advance payments for goods and services that will be used or rendered in future research and development activities are recorded as a prepaid expense and recognized as an expense within research and development expenses in the period that the related goods are consumed or services are performed. As at December 31, 2023, $1,382 (2022 – $274) was recorded as a prepaid expense.

## 10. GENERAL AND ADMINISTRATIVE EXPENSES

The nature of the general and administrative expenses for the three and nine months ended December 31, 2023 and 2022, is summarized as follows:

| | **Three months ended December 31, 2023** | Three months ended December 31, 2022 | **Nine months ended December 31, 2023** | Nine months ended December 31, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Salaries and wages | **415** | 385 | **1,603** | 1,450 |
| Professional and consulting fees | **1,215** | 1,036 | **3,819** | 2,515 |
| Office expenses | **71** | 89 | **244** | 251 |
| Other expenses | **69** | 45 | **196** | 199 |
| **Total general and administrative expenses** | **1,770** | 1,555 | **5,862** | 4,415 |

## 11. STOCK-BASED COMPENSATION

The function of the stock-based compensation expense for the three and nine months ended December 31, 2023 and 2022, is summarized as follows:

| | **Three months ended December 31, 2023** | Three months ended December 31, 2022 | **Nine months ended December 31, 2023** | Nine months ended December 31, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| General and administrative | **268** | 543 | **492** | 1,526 |
| Research and development | **174** | 266 | **286** | 831 |
| **Total stock-based compensation** | **442** | 809 | **778** | 2,357 |

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 11. STOCK-BASED COMPENSATION *(continued)*

During the nine months ended December 31, 2023, the Company revised its estimate of achieving a particular performance metric resulting in a reversal of previously expensed stock-based compensation.

## 12. SELLING AND MARKETING EXPENSES

The nature of the selling and marketing expenses for the three and nine months ended December 31, 2023 and 2022, is summarized as follows:

| | **Three months ended December 31, 2023** | Three months ended December 31, 2022 | **Nine months ended December 31, 2023** | Nine months ended December 31, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Advertising and promotion | **6** | 5 | **46** | 68 |
| Travel and entertainment | **75** | 62 | **278** | 207 |
| **Total selling and marketing expenses** | **81** | 67 | **324** | 275 |

## 13. FINANCE INCOME AND RELATED COSTS

The components of the finance income and related costs for the three and nine months ended December 31, 2023 and 2022, are as follows:

| | **Three months ended December 31, 2023** | Three months ended December 31, 2022 | **Nine months ended December 31, 2023** | Nine months ended December 31, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Interest and bank charges | **2** | 2 | **7** | 7 |
| Foreign currency transactions | **3** | - | **10** | 83 |
| Finance income | **(388)** | (459) | **(1,336)** | (999) |
| **Total finance income and related costs** | **(383)** | (457) | **(1,319)** | (909) |

## 14. CAPITAL RISK MANAGEMENT

The Company's primary objective with respect to its capital management is to ensure that it has sufficient cash resources to fund the research, development and patent of drugs. To secure the additional capital necessary to pursue these plans, the Company may attempt to raise additional funds through the issuance of equity.

The Company includes the following in its definition of capital: share capital, Common Share purchase warrants, contributed surplus and accumulated deficit, which, as at December 31, 2023, totalled $25,937 (March 31, 2023 – $40,166). The Company is not subject to externally imposed capital requirements.

## 15. FINANCIAL RISK MANAGEMENT

The Company is exposed to a variety of financial risks by virtue of its activities: credit risk, liquidity risk, foreign currency risk and interest rate risk. The overall risk management program focuses on the unpredictability of financial markets and seeks to minimize potential adverse effects on financial performance.

Risk management is carried out by the officers of the Company as discussed with the Board of Directors. The officers of the Company are charged with the responsibility of establishing controls and procedures to ensure that financial risks are mitigated in accordance with the expectation of the Board of Directors as follows:

### Credit risk

The Company's credit risk is primarily attributable to other receivables and the excess of cash held in one financial institution over the deposit insurance limit set by the Canadian Deposit Insurance Corporation.

### Liquidity risk

Liquidity risk is the risk that the Company is not able to meet its financial obligations as they become due or can do so only at excessive cost. The Company manages its liquidity risk by forecasting cash flows and anticipated investing and financing activities. Officers of the Company are actively involved in the review and approval of planned expenditures, including actively seeking capital investment and generating revenue and profit from the commercialization of its products (note 2(c)).

As at December 31, 2023, the Company's financial obligations, including applicable interest, are due as follows:

| | Less than 1 year | 1–2 years | After 2 | Total |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Accounts payable and accrued liabilities | 2,794 | - | - | 2,794 |

### Foreign currency risk

The functional and reporting currency of the Company is the Canadian dollar. The Company undertakes transactions denominated in foreign currencies, including US dollars and euros, and, as such, is exposed to currency risk due to fluctuations in foreign exchange rates against the Canadian dollar. The Company does not use derivative instruments to reduce exposure to foreign currency risk.

### Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The Company is not currently incurring any debt and is, therefore, not exposed to changes in interest rates.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 16. COMMITMENTS AND CONTINGENCIES

On February 9, 2021, Antibe entered into an exclusive licensing agreement with Nuance Pharma (Shanghai) Co. Ltd. ("Nuance") for the development and commercialization of otenaproxesul in the Greater China region. The license provides Nuance with exclusive rights to commercialize otenaproxesul in China, Hong Kong, Macau, and Taiwan.

The Company received notice of arbitral proceedings from Nuance relating to this license agreement on January 21, 2022. Pursuant to the license agreement, Nuance is obligated to make up to US$80 million in payments to Antibe upon certain development and sales milestones, in addition to an upfront payment of US$20 million, which has been paid. Nuance seeks to have the license rescinded and the upfront payment returned, alleging that Antibe failed to adequately share information concerning the risks of transaminase elevations related to otenaproxesul. The Company considers Nuance's claims are unlikely to succeed. Management has determined that the occurrence of a loss is not probable and, therefore, there is no accrual in the condensed interim consolidated financial statements as at December 31, 2023 and March 31, 2023. The Company has engaged counsel to assist it with the arbitration proceedings, which have been brought under the Arbitration Rules of the Singapore International Arbitration Centre. Arbitration proceedings were held in May 2023 and a decision is pending.

## 17. SUBSEQUENT EVENTS

a) On December 29, 2023, the Company announced an Early Warrant Exercise Incentive Program ("Early Warrant Exercise Program") for its approximately 6.5 million outstanding and unlisted share purchase warrants having an exercise price of $1.50 and expiring on July 31, 2024.

The Early Warrant Exercise Program is designed to encourage the early exercise of the Warrants during a 30-day early exercise period expected to commence on January 16, 2024 and terminate on February 15, 2024 (the "Incentive Period"). The Company proposes to incentivize the early exercise of the Warrants by offering a reduction in the Amended Exercise Price from $1.50 to $1.00 to holders of the Warrants who exercise the Warrants during the Incentive Period. After February 15, 2024, the exercise price of the Warrants will revert to $1.50 per Common Share.

On January 15, 2024, the Toronto Stock Exchange provided final approval for the Early Warrant Exercise Program with an effective date for the amendments of January 16, 2024.

None of the Warrants are held by insiders of the Company.

The following is a summary of all Warrants exercised during the period from January 1, 2024 to the date of issuance of these condensed interim consolidated financial statements:

| Exercise price | Number of Warrants | Proceeds |
|---|---|---|
| $ | | $ |
| 1.00 | 74,873 | 75 |

Each of the Warrants entitled the bearer to purchase one Common Share of the Company.

On February 1, 2024, the Company announced an extension of the termination date of the Early Warrant Exercise Program to March 31, 2024 (the "Extension"). After March 31, 2024, the exercise price of the Warrants will revert to $1.50 per Common Share.

The Toronto Stock Exchange has provided conditional approval for the Extension with an effective date of February 16, 2024.

## 17. SUBSEQUENT EVENTS *(continued)*

b) On January 3, 2024, as part of a consulting agreement, the Company granted options of 24,000 Common Shares with an exercise price of $0.91 per share. The options vested immediately upon granting, and the total fair value, calculated using the BSM, is $21.

This is **Exhibit "D"**
Referred to in the Affidavit of Scott Curtis
Affirmed remotely before me this 8th day of April, 2024

Dillon Gohil

A Commissioner for Taking Affidavits (or as may be)


**ANTIBE THERAPEUTICS INC.**

# UNAUDITED CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS

**For the Three and Six Months ended September 30, 2023 and 2022**

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Financial Position**
**As at September 30, 2023 and March 31, 2023**
(Expressed in thousands of Canadian dollars)
(Unaudited)

| | **September 30, 2023** | March 31, 2023 |
|---|---|---|
| | $ | $ |
| **ASSETS** | | |
| **Current** | | |
| Cash and cash equivalents | **4,143** | 6,755 |
| Term deposits *[note 4]* | **23,733** | 32,137 |
| Other receivables *[note 5]* | **1,639** | 1,655 |
| Prepaid expenses *[note 9]* | **1,584** | 999 |
| Total current assets | **31,099** | 41,546 |
| **Non-current assets** | | |
| Deferred contract costs | **1,283** | 1,283 |
| Deferred consideration receivable *[note 3]* | **1,471** | 1,380 |
| Intangible assets | **26,352** | 26,352 |
| Total non-current assets | **29,106** | 29,015 |
| **TOTAL ASSETS** | **60,205** | 70,561 |
| **LIABILITIES** | | |
| **Current** | | |
| Accounts payable and accrued liabilities | **2,865** | 2,764 |
| Total current liabilities | **2,865** | 2,764 |
| **Non-current liabilities** | | |
| Deferred revenue | **27,631** | 27,631 |
| Total non-current liabilities | **27,631** | 27,631 |
| **TOTAL LIABILITIES** | **30,496** | 30,395 |
| **SHAREHOLDERS' EQUITY** | | |
| Share capital | **141,582** | 141,489 |
| Common Share purchase warrants *[note 7(c)]* | **10,264** | 10,264 |
| Contributed surplus | **19,148** | 18,904 |
| Deficit | **(141,285)** | (130,491) |
| **TOTAL SHAREHOLDERS' EQUITY** | **29,709** | 40,166 |
| **TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY** | **60,205** | 70,561 |

Commitments and contingencies *[note 16]*

*(Signed) Daniel Legault* Daniel Legault, Director
*(Signed) Robert Hoffman* Robert Hoffman, Director

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Loss and Comprehensive Loss**
**For the Three and Six Months Ended September 30, 2023 and 2022**
(Expressed in thousands of Canadian dollars, except share and per share amounts)
(Unaudited)

| | **Three months ended September 30, 2023** | Three months ended September 30, 2022 | **Six months ended September 30, 2023** | Six months ended September 30, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| **EXPENSES** | | | | |
| Research and development *[note 9]* | **3,492** | 3,857 | **7,059** | 7,685 |
| General and administrative *[note 10]* | **1,941** | 1,729 | **4,091** | 2,860 |
| Stock-based compensation *[notes 7 and 11]* | **(80)** | 806 | **337** | 1,549 |
| Selling and marketing *[note 12]* | **96** | 114 | **243** | 208 |
| Total expenses | **5,449** | 6,506 | **11,730** | 12,302 |
| **LOSS FROM CONTINUING OPERATIONS** | **(5,449)** | (6,506) | **(11,730)** | (12,302) |
| Finance income and related costs *[note 13]* | **(443)** | (258) | **(936)** | (453) |
| **NET LOSS FROM CONTINUING OPERATIONS** | **(5,006)** | (6,248) | **(10,794)** | (11,849) |
| **DISCONTINUED OPERATIONS** | | | | |
| Income from discontinued operations *[note 3]* | **-** | 169 | **-** | 239 |
| **NET LOSS AND COMPREHENSIVE LOSS** | **(5,006)** | (6,079) | **(10,794)** | (11,610) |
| **Basic and diluted loss per share** *[note 8]* | **(0.10)** | (0.12) | **(0.21)** | (0.22) |
| **Basic and diluted weighted average number of shares outstanding** *[note 8]* | **52,637,091** | 52,129,929 | **52,633,703** | 52,143,116 |

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Changes in Shareholders' Equity**
**For the Six Months Ended September 30, 2023 and 2022**
(Expressed in thousands of Canadian dollars, except share amounts)
(Unaudited)

| | Number of Common Shares | Share capital | Common Share(s) purchase warrants | Contributed surplus | Deficit | Total shareholders' equity |
|---|---|---|---|---|---|---|
| | | $ | $ | $ | $ | $ |
| Balance, March 31, 2022 | 52,099,276 | 139,547 | 10,264 | 18,038 | (111,016) | 56,833 |
| Shares issued for redeemed restricted share units *[note 7(b)]* | 41,779 | 124 | - | (124) | - | - |
| Stock-based compensation | - | - | - | 1,549 | - | 1,549 |
| Net loss from continuing operations for the period | - | - | - | - | (11,849) | (11,849) |
| Income from discontinued operations | - | - | - | - | 239 | 239 |
| Balance, September 30, 2022 | 52,141,055 | 139,671 | 10,264 | 19,463 | (122,626) | 46,772 |
| Balance, March 31, 2023 | 52,617,092 | 141,489 | 10,264 | 18,904 | (130,491) | 40,166 |
| Shares issued for redeemed restricted share units *[note 7(b)]* | **19,999** | **93** | **-** | **(93)** | **-** | **-** |
| Stock-based compensation | **-** | **-** | **-** | **337** | **-** | **337** |
| Net loss from continuing operations for the period | **-** | **-** | **-** | **-** | **(10,794)** | **(10,794)** |
| **Balance, September 30, 2023** | **52,637,091** | **141,582** | **10,264** | **19,148** | **(141,285)** | **29,709** |

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Cash Flows**
**For the Six Months Ended September 30, 2023 and 2022**
(Expressed in thousands of Canadian dollars)
(Unaudited)

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| **OPERATING ACTIVITIES** | | |
| Net loss from continuing operations for the period | **(10,794)** | (11,849) |
| Income from discontinued operations *[note 3]* | **-** | 239 |
| Items not affecting cash: | | |
| Stock-based compensation *[notes 7 and 11]* | **337** | 1,549 |
| Interest on capitalized lease payments | **-** | 4 |
| | **(10,457)** | (10,057) |
| Changes in non-cash balances: | | |
| Other receivables | **(75)** | 878 |
| Inventory | **-** | (298) |
| Prepaid expenses | **(585)** | 14 |
| Accounts payable and accrued liabilities | **101** | (113) |
| Deferred tax liability | **-** | 260 |
| Net change in non-cash balances | **(559)** | 741 |
| **Cash flows used in operating activities** | **(11,016)** | (9,316) |
| **INVESTING ACTIVITIES** | | |
| Purchase of term deposits | **(13,422)** | (28,109) |
| Redemption of term deposits | **21,826** | 16,299 |
| **Cash flows provided by (used in) investing activities** | **8,404** | (11,810) |
| **FINANCING ACTIVITIES** | | |
| Lease payments | **-** | (78) |
| **Cash flows used in financing activities** | **-** | (78) |
| **Net decrease in cash and cash equivalents during the period** | **(2,612)** | (21,204) |
| Cash and cash equivalents, beginning of the period | **6,755** | 34,807 |
| **Cash and cash equivalents, end of the period** | **4,143** | 13,603 |

## 1. DESCRIPTION OF BUSINESS

Antibe Therapeutics Inc. (the "Company" or "Antibe") was incorporated under the *Business Corporations Act* (Ontario) on May 5, 2009. The Company's common shares (the "Common Share(s)") trade on the Toronto Stock Exchange under the symbol "ATE", and on the OTCQX market under the symbol "ATBPF."

The Company originates, develops and out-licenses new pharmaceuticals. Antibe's lead compound, otenaproxesul (previously known as ATB-346), combines a moiety that releases hydrogen sulfide with naproxen, an approved, marketed and off-patent, non-steroidal, anti-inflammatory drug. The Company's main objectives are to develop otenaproxesul by satisfying the requirements of the relevant drug regulatory authorities while also satisfying the commercial licensing objectives of prospective global partners. The Company has also established a development plan for its lead compound through to the end of Phase III human clinical studies for regulatory discussion purposes. Additionally, the Company continues to investigate other research projects as well as additional development opportunities.

The Company was also, through its wholly owned subsidiary, Citagenix Inc. ("Citagenix" or "CGX"), a seller of tissue regenerative products servicing the orthopaedic and dental marketplaces. Citagenix's portfolio consists of branded biologics and medical devices that promote bone regeneration. Citagenix operates in Canada through its direct sales force, and in the United States and internationally via a network of distributors. On November 1, 2022, the Company completed the sale of Citagenix to HANSAmed Limited (see note 3).

The address of the Company's registered head office and principal place of business is 15 Prince Arthur Avenue, Toronto, Ontario, Canada, M5R 1B2.

These unaudited condensed interim consolidated financial statements were authorized for issuance by the Board of Directors on November 10, 2023.

## 2. BASIS OF PRESENTATION

**(a) Statement of compliance** –

These unaudited condensed interim consolidated financial statements were prepared using the same accounting policies and methods as those used in the Company's audited consolidated financial statements as at and for the year ended March 31, 2023. These unaudited condensed interim consolidated financial statements have been prepared in accordance with International Accounting Standard 34, *Interim Financial Reporting*. Accordingly, these unaudited condensed interim consolidated financial statements do not include all the disclosures required for annual financial statements and should be read in conjunction with the annual consolidated financial statements of the Company as at and for the year ended March 31, 2023, which are available on SEDAR. Several amendments apply for the first time in 2023, but do not have an impact on the unaudited condensed interim consolidated financial statements of the Company. The Company has not early adopted any other standard, interpretation or amendment that has been issued but is not yet effective.

**(b) Consolidation –**

These unaudited condensed interim consolidated financial statements reflect the accounts of the Company and its previously wholly owned subsidiary, Citagenix.

Prior to November 1, 2022, the Company operated as two operating segments: Antibe (research and development of new pharmaceuticals) and Citagenix (a seller of tissue regenerative products servicing the orthopaedic and dental marketplaces). On November 1, 2022, the Company closed the sale of Citagenix.

The results of the operations of Citagenix in the comparative period are recorded within income from discontinued operations in the interim consolidated statements of loss and comprehensive loss (note 3).

All intercompany balances and transactions have been eliminated on consolidation.

## 2. BASIS OF PRESENTATION *(continued)*

### (c) Going concern –

The unaudited condensed interim consolidated financial statements have been prepared assuming that the Company will continue as a going concern. For the six months ended September 30, 2023, the Company incurred a net loss from continuing operations of $10,794, had negative cash flows from operations of $11,016 and an accumulated deficit of $141,285.

Until such time as the Company's pharmaceutical products are patented and approved for sale, the Company's liquidity requirements are dependent on its ability to raise additional capital by selling additional equity, from licensing agreements of its lead compound, from proceeds from the exercise of stock options and Common Shares purchase warrants or by obtaining credit facilities. The Company's future capital requirements will depend on many factors, including, but not limited to, the market acceptance of its products and services. No assurance can be given that any such additional funding will be available or that, if available, it can be obtained on terms favourable to the Company.

All of the factors above indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern, which assumes the Company will continue its operations for the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the ordinary course of business. Management's plans to address these issues involve actively seeking capital investment and generating revenue and profit from the commercialization of its products. The Company's ability to continue as a going concern is subject to management's ability to successfully implement this plan. Failure to implement this plan could have a material adverse effect on the Company's financial condition and financial performance.

If the going concern assumption were not appropriate for these unaudited condensed interim consolidated financial statements, then adjustments would be necessary to the carrying value of assets and liabilities, the reported revenue and expenses, and the classifications used in the interim consolidated statements of financial position. The unaudited condensed interim consolidated financial statements do not include adjustments that would be necessary if the going concern assumption were not appropriate.

### (d) Use of estimates –

The preparation of these unaudited condensed interim consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, if any, as at the date of the unaudited condensed interim consolidated financial statements, and the reported amounts of expenses during the reporting period. Actual results may vary from the current estimates. These estimates are reviewed periodically and, as adjustments become necessary, they are reported in income in the year in which such adjustments become known. Significant estimates in these unaudited condensed interim consolidated financial statements include the completeness of the accrual for research and clinical trial expenses, and accruals and inputs related to the calculation of stock-based compensation.

## 3. SALE OF CGX

On November 1, 2022, the Company completed the sale of its wholly owned subsidiary, CGX. The $6,500 transaction involves a guaranteed $3,500, and a further $3,000 subject to Citagenix achieving sales milestones over the three-year period following closing. On February 15, 2023, the agreement was amended to include an additional $1,000 of contingent consideration and a one-year extension, bringing the total consideration to $7,500. The fair value of the contingent consideration was determined to be $nil as of the date of the sale and $nil as of September 30, 2023. The present value of the deferred consideration was determined to be $2,255 as of the date of the sale and $2,346 as of September 30, 2023, using a discount rate of 8%.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 3. SALE OF CGX *(continued)*

The results of Citagenix for the three and six months ended September 30, 2022 are included in the interim consolidated statements of loss and comprehensive loss as income from discontinued operations, and are presented below:

| | Three months ended September 30, 2022 | Six months ended September 30, 2022 |
|---|---|---|
| | $ | |
| Revenue | 2,879 | 6,022 |
| Cost of goods sold | 1,761 | 3,566 |
| Gross profit | 1,118 | 2,456 |
| Expenses | 949 | 1,957 |
| Income before tax from discontinued operations | 169 | 499 |
| Provision for income taxes | - | 260 |
| **Income from discontinued operations** | 169 | 239 |

## 4. TERM DEPOSITS

As at September 30, 2023, the Company held investments of $23,733 (March 31, 2023 – $32,137) in four separate Canadian currency guaranteed investment certificates ("GICs") having terms of six, nine and twelve months, and one USD currency GIC having a term of six months. Interest rates range from 4.85% to 5.90%.

## 5. OTHER RECEIVABLES

| | **September 30, 2023** | March 31, 2023 |
|---|---|---|
| | $ | $ |
| SR&ED | **-** | 46 |
| Deferred consideration receivable *[note 3]* | **875** | 875 |
| Interest receivable | **449** | 508 |
| Harmonized Sales Tax receivable | **271** | 186 |
| | **1,595** | 1,615 |
| Employee advances *[note 6]* | **44** | 40 |
| | **1,639** | 1,655 |

## 6. RELATED PARTY TRANSACTIONS

Employee cash advances as at September 30, 2023, totalled $44 (March 31, 2023 – $40). Currently, the Company has one officer receiving cash advances.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 7. SHARE CAPITAL

### (a) Stock options –

On September 12, 2023, the Company granted options of 667,500 Common Shares with an exercise price of $0.56 per share to its directors, officers, employees, and certain consultants. The total fair value of these options, calculated using the BSM, is $224. All options are subject to a service condition: one third (1/3) of the options granted will vest on each of the first, second and third anniversaries of the grant date.

On September 12, 2023, the Company also granted 357,500 performance options with an exercise price of $0.56 per share to key senior executives. Vesting of these options is subject to the successful achievement of certain goals that are designed to reflect the successful execution of the Company's business plan and strategy. The estimated fair value of these performance options, calculated using the BSM, is $120. As at September 30, 2023, it was determined that the probability and timing of achieving the performance criteria was more likely than not and, as such, $3 was expensed during the period and included in contributed surplus.

The following is a summary of all options to purchase Common Shares that are outstanding as at September 30, 2023 and 2022, as well as details on exercise prices and expiry dates:

| | **Six months ended September 30, 2023** | | Six months ended September 30, 2022 | |
|---|---|---|---|---|
| | **Options** | **Weighted average price** | Options | Weighted average price |
| | | $ | | $ |
| **Balance, beginning of the period** | **1,430,112** | **1.83** | 1,274,435 | 2.93 |
| Granted during the period | **1,025,000** | **0.56** | - | - |
| Forfeited during the period | **-** | **-** | (55,000) | 3.40 |
| **Balance, end of the period** | **2,455,112** | **1.30** | 1,219,435 | 2.08 |

| **Number of options** | **Exercise price** | **Expiry date** |
|---|---|---|
| | $ | |
| 15,000 | 5.50 | October 21, 2023 |
| 66,000 | 0.68 | January 11, 2024 |
| 80,500 | 6.60 | March 4, 2024 |
| 20,000 | 0.91 | November 15, 2024 |
| 36,000 | 1.40 | July 13, 2025 |
| 156,272 | 1.45 | March 9, 2026 |
| 687,000 | 2.00 | March 31, 2027 |
| 15,152 | 4.95 | April 11, 2028 |
| 4,188 | 4.00 | May 8, 2028 |
| 10,000 | 2.90 | March 11, 2029 |
| 340,000 | 0.48 | November 15, 2032 |
| 1,025,000 | 0.56 | September 12, 2033 |
| 2,455,112 | | |

The number of options exercisable as at September 30, 2023, is 1,090,112 and the weighted average exercise price of these options is $2.25.

The total fair value of options not yet recognized as an expense is $614.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 7. SHARE CAPITAL *(continued)*

For the three and six months ended September 30, 2023, totals of $37 and $59, respectively (2022 – $3 and $6, respectively) related to stock options have been included within stock-based compensation in the interim consolidated statements of loss and comprehensive loss.

The following assumptions were used in the BSM to determine the fair value of stock options granted in the period:

| | **Six months ended September 30, 2023** | Six months ended September 30, 2022 |
|---|---|---|
| Weighted average risk-free interest rate | **3.69%** | - |
| Weighted average expected volatility | **119%** | - |
| Expected dividend yield | **-** | - |
| Weighted average expected life of options | **10 years** | - |
| Weighted average share price | **$0.56** | - |
| Weighted average exercise price | **$0.56** | - |

**(b) Restricted share unit plan –**

The following is a summary of all restricted share units ("RSUs") for Common Shares that are outstanding as at September 30, 2023 and 2022:

| | **Six months ended September 30, 2023** | Six months ended September 30, 2022 |
|---|---|---|
| | **RSUs** | RSUs |
| **Balance, beginning of the period** | **3,537,265** | 2,438,445 |
| Redeemed during the period | **(19,999)** | (41,779) |
| Forfeited during the period | **-** | (5,083) |
| **Balance, end of the period** | **3,517,266** | 2,391,583 |

Based on the share price on the date of granting, the total fair value of RSUs not yet recognized as an expense is $448.

For the three and six months ended September 30, 2023, totals of $(111) and $283, respectively (2022 – $803 and $1,543, respectively) related to RSUs have been included within stock-based compensation in the interim consolidated statements of loss and comprehensive loss.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 7. SHARE CAPITAL *(continued)*

**(c) Common Share purchase warrants –**

The following is a summary of all warrants to purchase Common Shares that are outstanding as at September 30, 2023 and 2022, as well as details on exercise prices and expiry dates:

| | **Six months ended September 30, 2023** | | Six months ended September 30, 2022 | |
|---|---|---|---|---|
| | **Warrants** | **Weighted average price** | Warrants | Weighted average price |
| | | $ | | $ |
| **Balance, beginning of the period** | **6,485,706** | **4.76** | 7,389,166 | 6.31 |
| Expired during the period | **-** | **-** | (499,810) | 3.96 |
| **Balance, end of the period** | **6,485,706** | **4.76** | 6,889,356 | 4.83 |

| **Number of warrants** | **Exercise price** | **Expiry date** |
|---|---|---|
| | $ | |
| 3,121,956 | 1.80 | December 31, 2023 |
| 3,363,750 | 7.50 | February 24, 2024 |
| 6,485,706 | | |

## 8. LOSS PER SHARE

Basic loss per share is calculated by dividing the net loss attributable to common shareholders by the weighted average number of Common Shares outstanding during the period. All unexercised share options and warrants were excluded from calculating diluted loss per share as the effect of their issuance would be anti-dilutive.

## 9. RESEARCH AND DEVELOPMENT EXPENSES

The nature of the research and development expenses for the three and six months ended September 30, 2023 and 2022, is summarized as follows:

| | **Three months ended September 30, 2023** | Three months ended September 30, 2022 | **Six months ended September 30, 2023** | Six months ended September 30, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Salaries and wages | **561** | 516 | **1,222** | 1,197 |
| Professional and consulting fees | **306** | 320 | **567** | 938 |
| Research and clinical trial costs | **2,625** | 3,021 | **5,270** | 5,550 |
| **Total research and development expenses** | **3,492** | 3,857 | **7,059** | 7,685 |

Non-refundable advance payments for goods and services that will be used or rendered in future research and development activities are recorded as a prepaid expense and recognized as an expense within "Research and development" in the period that the related goods are consumed or services are performed. As at September 30, 2023, $1,292 (2022 – $570) was recorded as a prepaid expense.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 10. GENERAL AND ADMINISTRATIVE EXPENSES

The nature of the general and administrative expenses for the three and six months ended September 30, 2023 and 2022, is summarized as follows:

| | **Three months ended September 30, 2023** | Three months ended September 30, 2022 | **Six months ended September 30, 2023** | Six months ended September 30, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Salaries and wages | **781** | 722 | **1,188** | 1,065 |
| Professional and consulting fees | **1,002** | 842 | **2,604** | 1,479 |
| Office expenses | **86** | 76 | **173** | 162 |
| Other expenses | **72** | 89 | **126** | 154 |
| **Total general and administrative expenses** | **1,941** | 1,729 | **4,091** | 2,860 |

## 11. STOCK-BASED COMPENSATION

The function of the stock-based compensation expense for the three and six months ended September 30, 2023 and 2022, is summarized as follows:

| | **Three months ended September 30, 2023** | Three months ended September 30, 2022 | **Six months ended September 30, 2023** | Six months ended September 30, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| General and administrative | **(18)** | 506 | **224** | 984 |
| Research and development | **(62)** | 300 | **113** | 565 |
| **Total stock-based compensation** | **(80)** | 806 | **337** | 1,549 |

During the three months ended September 30, 2023, the Company revised its estimate of achieving a particular performance metric resulting in a reversal of previously expensed stock-based compensation.

## 12. SELLING AND MARKETING EXPENSES

The nature of the selling and marketing expenses for the three and six months ended September 30, 2023 and 2022, is summarized as follows:

| | **Three months ended September 30, 2023** | Three months ended September 30, 2022 | **Six months ended September 30, 2023** | Six months ended September 30, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Advertising and promotion | **30** | 11 | **40** | 63 |
| Travel and entertainment | **66** | 103 | **203** | 145 |
| **Total selling and marketing expenses** | **96** | 114 | **243** | 208 |

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 13. FINANCE INCOME AND RELATED COSTS

The components of the finance income and related costs for the three and six months ended September 30, 2023 and 2022, are as follows:

| | **Three months ended September 30, 2023** | Three months ended September 30, 2022 | **Six months ended September 30, 2023** | Six months ended September 30, 2022 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Interest and bank charges | **2** | 2 | **5** | 4 |
| Foreign currency transactions | **19** | 59 | **7** | 83 |
| Finance income | **(464)** | (319) | **(948)** | (540) |
| **Total finance income and related costs** | **(443)** | (258) | **(936)** | (453) |

## 14. CAPITAL RISK MANAGEMENT

The Company's primary objective with respect to its capital management is to ensure that it has sufficient cash resources to fund the research, development and patent of drugs. To secure the additional capital necessary to pursue these plans, the Company may attempt to raise additional funds through the issuance of equity.

The Company includes the following in its definition of capital: share capital, Common Share purchase warrants, contributed surplus and accumulated deficit, which, as at September 30, 2023, totalled $29,709 (March 31, 2023 – $40,166). The Company is not subject to externally imposed capital requirements.

## 15. FINANCIAL RISK MANAGEMENT

The Company is exposed to a variety of financial risks by virtue of its activities: credit risk, liquidity risk, foreign currency risk and interest rate risk. The overall risk management program focuses on the unpredictability of financial markets and seeks to minimize potential adverse effects on financial performance.

Risk management is carried out by the officers of the Company as discussed with the Board of Directors. The officers of the Company are charged with the responsibility of establishing controls and procedures to ensure that financial risks are mitigated in accordance with the expectation of the Board of Directors as follows:

### Credit risk

The Company's credit risk is primarily attributable to other receivables and the excess of cash held in one financial institution over the deposit insurance limit set by the Canadian Deposit Insurance Corporation.

### Liquidity risk

Liquidity risk is the risk that the Company is not able to meet its financial obligations as they become due or can do so only at excessive cost. The Company manages its liquidity risk by forecasting cash flows and anticipated investing and financing activities. Officers of the Company are actively involved in the review and approval of planned expenditures, including actively seeking capital investment and generating revenue and profit from the commercialization of its products (note 2(c)).

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 15. FINANCIAL RISK MANAGEMENT *(continued)*

As at September 30, 2023, the Company's financial obligations, including applicable interest, are due as follows:

| | Less than 1 year | 1–2 years | After 2 | Total |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Accounts payable and accrued liabilities | 2,865 | - | - | 2,865 |

**Foreign currency risk**

The functional and reporting currency of the Company is the Canadian dollar. The Company undertakes transactions denominated in foreign currencies, including US dollars and euros, and, as such, is exposed to currency risk due to fluctuations in foreign exchange rates against the Canadian dollar. The Company does not use derivative instruments to reduce exposure to foreign currency risk.

**Interest rate risk**

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The Company is not currently incurring any debt and is, therefore, not exposed to changes in interest rates.

## 16. COMMITMENTS AND CONTINGENCIES

On February 9, 2021, Antibe entered into an exclusive licensing agreement with Nuance Pharma (Shanghai) Co. Ltd. ("Nuance") for the development and commercialization of otenaproxesul in the Greater China region. The license provides Nuance with exclusive rights to commercialize otenaproxesul in China, Hong Kong, Macau, and Taiwan.

The Company received notice of arbitral proceedings from Nuance relating to this license agreement on January 21, 2022. Pursuant to the license agreement, Nuance is obligated to make up to US$80 million in payments to Antibe upon certain development and sales milestones, in addition to an upfront payment of US$20 million, which has been paid. Nuance seeks to have the license rescinded and the upfront payment returned, alleging that Antibe failed to adequately share information concerning the risks of transaminase elevations related to otenaproxesul. The Company considers Nuance's claims are unlikely to succeed. Management has determined that the occurrence of a loss is not probable and, therefore, there is no accrual in the condensed interim consolidated financial statements as at September 30, 2023 and March 31, 2023. The Company has engaged counsel to assist it with the arbitration proceedings, which have been brought under the Arbitration Rules of the Singapore International Arbitration Centre. Arbitration proceedings were held in May 2023 and a decision is pending.

**ANTIBE THERAPEUTICS INC.**

# UNAUDITED CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS

**For the Three Months ended June 30, 2023 and 2022**

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Financial Position**
**As at June 30, 2023 and March 31, 2023**
(Expressed in thousands of Canadian dollars)
(Unaudited)

| | June 30, 2023 | March 31, 2023 |
|---|---|---|
| | $ | $ |
| **ASSETS** | | |
| **Current** | | |
| Cash and cash equivalents | **8,793** | 6,755 |
| Term deposits *[note 4]* | **25,514** | 32,137 |
| Other receivables *[note 5]* | **1,544** | 1,655 |
| Prepaid expenses *[note 9]* | **1,926** | 999 |
| Total current assets | **37,777** | 41,546 |
| **Non-current assets** | | |
| Deferred contract costs | **1,283** | 1,283 |
| Deferred consideration receivable *[note 3]* | **1,425** | 1,380 |
| Intangible assets | **26,352** | 26,352 |
| Total non-current assets | **29,060** | 29,015 |
| **TOTAL ASSETS** | **66,837** | 70,561 |
| **LIABILITIES** | | |
| **Current** | | |
| Accounts payable and accrued liabilities | **4,410** | 2,764 |
| Total current liabilities | **4,410** | 2,764 |
| **Non-current liabilities** | | |
| Deferred revenue | **27,631** | 27,631 |
| Total non-current liabilities | **27,631** | 27,631 |
| **TOTAL LIABILITIES** | **32,041** | 30,395 |
| **SHAREHOLDERS' EQUITY** | | |
| Share capital | **141,581** | 141,489 |
| Common share purchase warrants *[note 7(c)]* | **10,264** | 10,264 |
| Contributed surplus | **19,228** | 18,904 |
| Deficit | **(136,277)** | (130,491) |
| **TOTAL SHAREHOLDERS' EQUITY** | **34,796** | 40,166 |
| **TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY** | **66,837** | 70,561 |

Commitments and contingencies *[note 16]*

*(Signed) Daniel Legault* Daniel Legault, Director
*(Signed) Robert Hoffman* Robert Hoffman, Director

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Loss and Comprehensive Loss**
**For the Three Months Ended June 30, 2023 and 2022**
(Expressed in thousands of Canadian dollars, except share and per share amounts)
(Unaudited)

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| **EXPENSES** | | |
| Research and development *[note 9]* | **3,567** | 3,828 |
| General and administrative *[note 10]* | **2,150** | 1,131 |
| Stock-based compensation *[note 11]* | **416** | 743 |
| Selling and marketing *[note 12]* | **147** | 94 |
| Total expenses | **6,280** | 5,796 |
| **LOSS FROM CONTINUING OPERATIONS** | **(6,280)** | (5,796) |
| Finance income and related costs *[note 13]* | **(494)** | (195) |
| **NET LOSS FROM CONTINUING OPERATIONS** | **(5,786)** | (5,601) |
| **DISCONTINUED OPERATIONS** | | |
| Income from discontinued operations *[note 3]* | **-** | 70 |
| **NET LOSS AND COMPREHENSIVE LOSS** | **(5,786)** | (5,531) |
| **Basic and diluted loss per share** *[note 8]* | **(0.11)** | (0.10) |
| **Basic and diluted weighted average number of shares outstanding** *[note 8]* | **52,630,278** | 52,112,243 |

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Changes in Shareholders' Equity**
**For the Three Months Ended June 30, 2023 and 2023**
(Expressed in thousands of Canadian dollars, except share amounts)
(Unaudited)

| | Number of Common Shares | Share capital | Common Share purchase warrants | Contributed surplus | Deficit | Total shareholders' equity |
|---|---|---|---|---|---|---|
| | | $ | $ | $ | $ | $ |
| Balance, March 31, 2022 | 52,099,276 | 139,547 | 10,264 | 18,038 | (111,016) | 56,833 |
| Shares issued for redeemed restricted share units *[note 7(b)]* | 20,000 | 22 | - | (22) | - | - |
| Stock-based compensation | - | - | - | 743 | - | 743 |
| Net loss from continuing operations for the period | - | - | - | - | (5,601) | (5,601) |
| Income from discontinued operations | - | - | - | - | 70 | 70 |
| Balance, June 30, 2022 | 52,119,276 | 139,569 | 10,264 | 18,759 | (116,547) | 52,045 |
| Balance, March 31, 2023 | 52,617,092 | 141,489 | 10,264 | 18,904 | (130,491) | 40,166 |
| Shares issued for redeemed restricted share units *[note 7(b)]* | **19,999** | **92** | **-** | **(92)** | **-** | **-** |
| Stock-based compensation | **-** | **-** | **-** | **416** | **-** | **416** |
| Net loss from continuing operations for the period | **-** | **-** | **-** | **-** | **(5,786)** | **(5,786)** |
| **Balance, June 30, 2023** | **52,637,091** | **141,581** | **10,264** | **19,228** | **(136,277)** | **34,796** |

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Cash Flows**
**For the Three Months Ended June 30, 2023 and 2022**
(Expressed in thousands of Canadian dollars)
(Unaudited)

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| **OPERATING ACTIVITIES** | | |
| Net loss from continuing operations for the period | **(5,786)** | (5,601) |
| Income from discontinued operations *[note 3]* | **-** | 70 |
| Items not affecting cash: | | |
| Stock-based compensation *[notes 7 and 11]* | **416** | 743 |
| Interest on capitalized lease payments | **-** | 2 |
| | **(5,370)** | (4,786) |
| Changes in non-cash balances: | | |
| Other receivables | **67** | 822 |
| Inventory | **-** | 108 |
| Prepaid expenses | **(927)** | 119 |
| Accounts payable and accrued liabilities | **1,646** | (1,106) |
| Deferred tax liability | **-** | 260 |
| Net change in non-cash balances | **786** | 203 |
| **Cash flows used in operating activities** | **(4,584)** | (4,583) |
| **INVESTING ACTIVITIES** | | |
| Purchase of term deposits | **(10,109)** | (11,640) |
| Redemption of term deposits | **16,731** | - |
| **Cash flows provided by (used in) investing activities** | **6,622** | (11,640) |
| **FINANCING ACTIVITIES** | | |
| Lease payments | **-** | (39) |
| **Cash flows used in financing activities** | **-** | (39) |
| **Net increase (decrease) in cash during the period** | **2,038** | (16,262) |
| Cash and cash equivalents, beginning of the period | **6,755** | 34,807 |
| **Cash and cash equivalents, end of the period** | **8,793** | 18,545 |

## 1. DESCRIPTION OF BUSINESS

Antibe Therapeutics Inc. (the "Company" or "Antibe") was incorporated under the *Business Corporations Act* (Ontario) on May 5, 2009. The Company's common shares (the "Common Shares") trade on the Toronto Stock Exchange ("TSX") under the symbol "ATE", and on the OTCQX market under the symbol "ATBPF."

The Company originates, develops and out-licenses new pharmaceuticals. Antibe's lead compound, otenaproxesul (previously known as ATB-346), combines a moiety that releases hydrogen sulfide with naproxen, an approved, marketed and off-patent, non-steroidal, anti-inflammatory drug. The Company's main objectives are to develop otenaproxesul by satisfying the requirements of the relevant drug regulatory authorities while also satisfying the commercial licensing objectives of prospective global partners. The Company has also established a development plan for its lead compound through to the end of Phase III human clinical studies for regulatory discussion purposes. Additionally, the Company continues to investigate other research projects as well as additional development opportunities.

The Company was also, through its wholly owned subsidiary, Citagenix Inc. ("Citagenix" or "CGX"), a seller of tissue regenerative products servicing the orthopaedic and dental marketplaces. Citagenix's portfolio consists of branded biologics and medical devices that promote bone regeneration. Citagenix operates in Canada through its direct sales force, and in the United States and internationally via a network of distributors. On November 1, 2022, the Company completed the sale of Citagenix to HANSAmed Limited (see note 3).

The address of the Company's registered head office and principal place of business is 15 Prince Arthur Avenue, Toronto, Ontario, Canada, M5R 1B2.

These unaudited condensed interim consolidated financial statements were authorized for issuance by the Board of Directors on August 11, 2023.

## 2. BASIS OF PRESENTATION

**(a) Statement of compliance** –

These unaudited condensed interim consolidated financial statements were prepared using the same accounting policies and methods as those used in the Company's audited consolidated financial statements as at and for the year ended March 31, 2023. These unaudited condensed interim consolidated financial statements have been prepared in accordance with International Accounting Standard 34 ("IAS 34"), *Interim Financial Reporting*. Accordingly, these unaudited condensed interim consolidated financial statements do not include all the disclosures required for annual financial statements and should be read in conjunction with the annual consolidated financial statements of the Company as at and for the year ended March 31, 2023, which are available on SEDAR. Several amendments apply for the first time in 2023, but do not have an impact on the unaudited condensed interim consolidated financial statements of the Company. The Company has not early adopted any other standard, interpretation or amendment that has been issued but is not yet effective.

**(b) Consolidation –**

These unaudited condensed interim consolidated financial statements reflect the accounts of the Company and its previously wholly owned subsidiary, Citagenix.

Prior to November 1, 2022, the Company operated as two operating segments: Antibe (research and development of new pharmaceuticals) and Citagenix (a seller of tissue regenerative products servicing the orthopaedic and dental marketplaces). On November 1, 2022, the Company closed the sale of Citagenix.

The results of the operations of Citagenix in the comparative period are recorded within income from discontinued operations in the interim consolidated statements of loss and comprehensive loss (note 3).

All intercompany balances and transactions have been eliminated on consolidation.

## 2. BASIS OF PRESENTATION *(continued)*

### (c) Going concern –

The unaudited condensed interim consolidated financial statements have been prepared assuming that the Company will continue as a going concern. For the three months ended June 30, 2023, the Company incurred a net loss from continuing operations of $5,786, had negative cash flows from operations of $4,584 and an accumulated deficit of $136,277.

Until such time as the Company's pharmaceutical products are patented and approved for sale, the Company's liquidity requirements are dependent on its ability to raise additional capital by selling additional equity, from licensing agreements of its lead compound, from proceeds from the exercise of stock options and common share purchase warrants or by obtaining credit facilities. The Company's future capital requirements will depend on many factors, including, but not limited to, the market acceptance of its products and services. No assurance can be given that any such additional funding will be available or that, if available, it can be obtained on terms favourable to the Company.

All of the factors above indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern, which assumes the Company will continue its operations for the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the ordinary course of business. Management's plans to address these issues involve actively seeking capital investment and generating revenue and profit from the commercialization of its products. The Company's ability to continue as a going concern is subject to management's ability to successfully implement this plan. Failure to implement this plan could have a material adverse effect on the Company's financial condition and financial performance.

If the going concern assumption were not appropriate for these unaudited condensed interim consolidated financial statements, then adjustments would be necessary to the carrying value of assets and liabilities, the reported revenue and expenses, and the classifications used in the interim consolidated statements of financial position. The unaudited condensed interim consolidated financial statements do not include adjustments that would be necessary if the going concern assumption were not appropriate.

### (d) Use of estimates –

The preparation of these unaudited condensed interim consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, if any, as at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. Actual results may vary from the current estimates. These estimates are reviewed periodically and, as adjustments become necessary, they are reported in income in the year in which such adjustments become known. Significant estimates in these unaudited condensed interim consolidated financial statements include the completeness of the accrual for research and clinical trial expenses, and accruals and inputs related to the calculation of stock-based compensation.

## 3. SALE OF CGX

On November 1, 2022, the Company completed the sale of its wholly owned subsidiary, CGX. The $6,500 transaction involves a guaranteed $3,500, and a further $3,000 subject to Citagenix achieving sales milestones over the three-year period following closing. On February 15, 2023, the agreement was amended to include an additional $1,000 of contingent consideration and a one-year extension, bringing the total consideration to $7,500. The fair value of the contingent consideration was determined to be $0 as of the date of the sale and $0 as of June 30, 2023. The present value of the deferred consideration was determined to be $2,255 as of the date of the sale and $2,373 as of June 30, 2023, using a discount rate of 8%.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 3. SALE OF CGX *(continued)*

The results of Citagenix for the three months ended June 30, 2022 are included in the interim consolidated statements of loss and comprehensive loss as income from discontinued operations, and are presented below:

| | **2022** |
|---|---|
| | $ |
| Revenue | 3,143 |
| Cost of goods sold | 1,805 |
| Gross profit | 1,338 |
| Expenses | 1,008 |
| Loss on sale of CGX | - |
| Income before tax from discontinued operations | 330 |
| Provision for income taxes | 260 |
| **Income from discontinued operations** | 70 |

## 4. TERM DEPOSITS

As at June 30, 2023, the Company held investments of $25,514 (March 31, 2023 – $32,137) in four separate Canadian currency guaranteed investment certificates ("GICs") having terms of nine and twelve months, and one USD currency GIC having a term of six months. Interest rates range from 4.85% to 5.90%.

## 5. OTHER RECEIVABLES

| | **June 30, 2023** | March 31, 2023 |
|---|---|---|
| | $ | $ |
| SR&ED | **-** | 46 |
| Deferred consideration receivable *[note 3]* | **875** | 875 |
| Interest receivable | **318** | 508 |
| Harmonized Sales Tax receivable | **307** | 186 |
| | **1,500** | 1,615 |
| Employee advances *[note 6]* | **44** | 40 |
| | **1,544** | 1,655 |

## 6. RELATED PARTY TRANSACTIONS

On December 3, 2020, the Company completed the sale of 100% of the shares of its wholly owned subsidiary, BMT Medizintechnik GmbH, for cash consideration of €1 (one euro). Antibe has provided a loan to the purchaser in the amount of $157 (€100 thousand) for working capital purposes. The purchaser has subsequently experienced financial difficulties, and as a result, on March 31, 2023, the Company decided to write off this loan.

Employee cash advances as at June 30, 2023, totalled $44 (March 31, 2023 - $40). Currently, the Company has one officer receiving cash advances.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 7. SHARE CAPITAL

### (a) Stock options –

The following is a summary of all options to purchase Common Shares that are outstanding as at June 30, 2023 and 2022, as well as details on exercise prices and expiry dates:

| | **Three months ended June 30, 2023** | | Three months ended June 30, 2022 | |
|---|---|---|---|---|
| | **Options** | **Weighted average price** | Options | Weighted average price |
| | | $ | | $ |
| **Balance, beginning of the period** | **1,430,112** | **1.83** | 1,274,435 | 2.93 |
| Forfeited during the period | **-** | **-** | (20,000) | 3.40 |
| **Balance, end of the period** | **1,430,112** | **1.83** | 1,254,435 | 2.04 |

| **Number of options** | **Exercise price** | **Expiry date** |
|---|---|---|
| | $ | |
| 15,000 | 5.50 | October 21, 2023 |
| 66,000 | 0.68 | January 11, 2024 |
| 80,500 | 6.60 | March 4, 2024 |
| 20,000 | 0.91 | November 15, 2024 |
| 36,000 | 1.40 | July 13, 2025 |
| 156,272 | 1.45 | March 9, 2026 |
| 687,000 | 2.00 | March 31, 2027 |
| 15,152 | 4.95 | April 11, 2028 |
| 4,188 | 4.00 | May 8, 2028 |
| 10,000 | 2.90 | March 11, 2029 |
| 340,000 | 0.48 | November 15, 2032 |
| 1,430,112 | | |

The number of options exercisable as at June 30, 2023, is 1,090,112 and the weighted average exercise price of these options is $2.25.

The total fair value of options not yet recognized as an expense is $106.

For the three months ended June 30, 2023, a total of $22 (2022 - $3) related to stock options has been included within stock-based compensation in the interim consolidated statements of loss and comprehensive loss.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 7. SHARE CAPITAL *(continued)*

**(b) Restricted share unit plan –**

The following is a summary of all RSUs for Common Shares that are outstanding as at June 30, 2023 and 2022:

| | **Three months ended June 30, 2023** | Three months ended June 30, 2022 |
|---|---|---|
| | **RSUs** | RSUs |
| **Balance, beginning of the period** | **3,537,265** | 2,438,445 |
| Redeemed during the period | **(19,999)** | (20,000) |
| **Balance, end of the period** | **3,517,266** | 2,418,445 |

Based on the share price on the date of granting, the total fair value of RSUs not yet recognized as an expense is $896.

For the three months ended June 30, 2023, a total of $394 (2022 - $740) related to RSUs has been included within stock-based compensation in the interim consolidated statements of loss and comprehensive loss.

**(c) Common share purchase warrants –**

The following is a summary of all warrants to purchase Common Shares that are outstanding as at June 30, 2023 and 2022, as well as details on exercise prices and expiry dates:

| | **Three months ended June 30, 2023** | | Three months ended June 30, 2022 | |
|---|---|---|---|---|
| | **Warrants** | **Weighted average price** | Warrants | Weighted average price |
| | | $ | | $ |
| **Balance, beginning of the period** | **6,485,706** | **4.76** | 7,389,166 | 6.31 |
| Expired during the period | **-** | **-** | (499,810) | 3.96 |
| **Balance, end of the period** | **6,485,706** | **4.76** | 6,889,356 | 4.83 |

| **Number of warrants** | **Exercise price** | **Expiry date** |
|---|---|---|
| | $ | |
| 3,121,956 | 1.80 | December 31, 2023 |
| 3,363,750 | 7.50 | February 24, 2024 |
| 6,485,706 | | |

## 8. LOSS PER SHARE

Basic loss per share is calculated by dividing the net loss attributable to common shareholders by the weighted average number of Common Shares outstanding during the period. All unexercised share options and warrants were excluded from calculating diluted loss per share as the effect of their issuance would be anti-dilutive.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 9. RESEARCH AND DEVELOPMENT EXPENSES

The nature of the research and development expenses for the three months ended June 30, 2023 and 2022, is summarized as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Salaries and wages | **661** | 681 |
| Professional and consulting fees | **261** | 618 |
| Research and clinical trial costs | **2,645** | 2,529 |
| **Total research and development expenses** | **3,567** | 3,828 |

Non-refundable advance payments for goods and services that will be used or rendered in future research and development activities are recorded as a prepaid expense and recognized as an expense within "Research and development" in the period that the related goods are consumed or services are performed. As at June 30, 2023, $1,612 (2022 – $406) was recorded as a prepaid expense.

## 10. GENERAL AND ADMINISTRATIVE EXPENSES

The nature of the general and administrative expenses for the three months ended June 30, 2023 and 2022, is summarized as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Salaries and wages | **407** | 343 |
| Professional and consulting fees | **1,602** | 637 |
| Office expenses | **87** | 86 |
| Other expenses | **54** | 65 |
| **Total general and administrative expenses** | **2,150** | 1,131 |

## 11. STOCK-BASED COMPENSATION

The function of the stock-based compensation expense for the three months ended June 30, 2023 and 2022, is summarized as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| General and administrative | **241** | 478 |
| Research and development | **175** | 265 |
| **Total stock-based compensation** | **416** | 743 |

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 12. SELLING AND MARKETING EXPENSES

The nature of the selling and marketing expenses for the three months ended June 30, 2023 and 2022, is summarized as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Advertising and promotion | **10** | 52 |
| Travel and entertainment | **137** | 42 |
| **Total selling and marketing expenses** | **147** | 94 |

## 13. FINANCE INCOME AND RELATED COSTS (INCOME)

The components of the finance and related costs (income) for the three months ended June 30, 2023 and 2022, are as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Interest and bank charges | **2** | 2 |
| Foreign currency transactions | **(12)** | 24 |
| Finance income | **(484)** | (221) |
| **Total finance income and related costs** | **(494)** | (195) |

## 14. CAPITAL RISK MANAGEMENT

The Company's primary objective with respect to its capital management is to ensure that it has sufficient cash resources to fund the research, development and patent of drugs. To secure the additional capital necessary to pursue these plans, the Company may attempt to raise additional funds through the issuance of equity.

The Company includes the following in its definition of capital: share capital, common share purchase warrants, contributed surplus and accumulated deficit, which, for the three months ended June 30, 2023, totalled $34,796 (March 31, 2023 – $40,166). The Company is not subject to externally imposed capital requirements.

## 15. FINANCIAL RISK MANAGEMENT

The Company is exposed to a variety of financial risks by virtue of its activities: credit risk, liquidity risk, foreign currency risk and interest rate risk. The overall risk management program focuses on the unpredictability of financial markets and seeks to minimize potential adverse effects on financial performance.

Risk management is carried out by the officers of the Company as discussed with the Board of Directors. The officers of the Company are charged with the responsibility of establishing controls and procedures to ensure that financial risks are mitigated in accordance with the expectation of the Board of Directors as follows:

### Credit risk

The Company's credit risk is primarily attributable to other receivables and the excess of cash held in one financial institution over the deposit insurance limit set by the Canadian Deposit Insurance Corporation.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 15. FINANCIAL RISK MANAGEMENT *(continued)*

### Liquidity risk

Liquidity risk is the risk that the Company is not able to meet its financial obligations as they become due or can do so only at excessive cost. The Company manages its liquidity risk by forecasting cash flows and anticipated investing and financing activities. Officers of the Company are actively involved in the review and approval of planned expenditures, including actively seeking capital investment and generating revenue and profit from the commercialization of its products (note 2(c)).

As at June 30, 2023, the Company's financial obligations, including applicable interest, are due as follows:

| | Less than 1 year | 1–2 years | After 2 years | Total |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Accounts payable and accrued liabilities | 4,410 | - | - | 4,410 |

### Foreign currency risk

The functional and reporting currency of the Company is the Canadian dollar. The Company undertakes transactions denominated in foreign currencies, including US dollars and euros, and, as such, is exposed to currency risk due to fluctuations in foreign exchange rates against the Canadian dollar. The Company does not use derivative instruments to reduce exposure to foreign currency risk.

### Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The Company is not currently incurring any debt and is, therefore, not exposed to changes in interest rates.

## 16. COMMITMENTS AND CONTINGENCIES

On February 9, 2021, Antibe entered into an exclusive licensing agreement with Nuance Pharma (Shanghai) Co. Ltd. ("Nuance") for the development and commercialization of otenaproxesul in the Greater China region. The license provides Nuance with exclusive rights to commercialize otenaproxesul in China, Hong Kong, Macau, and Taiwan.

The Company received notice of arbitral proceedings from Nuance relating to this license agreement, on January 21, 2022. Pursuant to the license agreement, Nuance is obligated to make up to US$80 million in payments to Antibe upon certain development and sales milestones, in addition to an upfront payment of US$20 million, which has been paid. Nuance seeks to have the license rescinded and the upfront payment returned, alleging that Antibe failed to adequately share information concerning the risks of transaminase elevations related to otenaproxesul. The Company considers Nuance's claims are unlikely to succeed. Management has determined that the occurrence of a loss is not probable and therefore there is no accrual in the consolidated financial statements as at June 30, 2023 and March 31, 2023. The Company has engaged counsel to assist it with the arbitration proceedings, which have been brought under the Arbitration Rules of the Singapore International Arbitration Centre. Arbitration proceedings were held in May 2023 and a decision is pending.

## 1. DESCRIPTION OF BUSINESS

Antibe Therapeutics Inc. (the "Company" or "Antibe") was incorporated under the *Business Corporations Act* (Ontario) on May 5, 2009. The Company's common shares (the "Common Shares") trade on the Toronto Stock Exchange ("TSX") under the symbol "ATE", and on the OTCQX market under the symbol "ATBPF."

The Company originates, develops and out-licenses new pharmaceuticals. Antibe's lead compound, otenaproxesul (previously known as ATB-346), combines a moiety that releases hydrogen sulfide with naproxen, an approved, marketed and off-patent, non-steroidal, anti-inflammatory drug. The Company's main objectives are to develop otenaproxesul by satisfying the requirements of the relevant drug regulatory authorities while also satisfying the commercial licensing objectives of prospective global partners. The Company has also established a development plan for its lead compound through to the end of Phase III human clinical studies for regulatory discussion purposes. Additionally, the Company continues to investigate other research projects as well as additional development opportunities.

The Company was also, through its wholly owned subsidiary, Citagenix Inc. ("Citagenix" or "CGX"), a seller of tissue regenerative products servicing the orthopaedic and dental marketplaces. Citagenix's portfolio consists of branded biologics and medical devices that promote bone regeneration. Citagenix operates in Canada through its direct sales force, and in the United States and internationally via a network of distributors. On November 1, 2022, the Company completed the sale of Citagenix to HANSAmed Limited (see note 5).

The address of the Company's registered head office and principal place of business is 15 Prince Arthur Avenue, Toronto, Ontario, Canada, M5R 1B2.

The Company was founded with an exclusive intellectual property license from Antibe Holdings Inc. ("Holdings"), a related party, to develop and commercialize the Company's pipeline drugs. The license obligated the Company to pay royalties to Holdings on future revenues derived from this intellectual property. On May 7, 2021, the Board of Directors of Antibe and Holdings agreed to combine the companies in an amalgamation transaction. Under the terms of the agreement, the Company acquired full ownership of Holdings' patent portfolio, eliminating the royalty liability on future revenues (note 4). As of the date of the amalgamation on June 3, 2021, 11.4% of the Company's Common Shares were held by the former shareholders of Holdings.

These consolidated financial statements were authorized for issuance by the Board of Directors on June 28, 2023.

## 2. BASIS OF PRESENTATION

**(a) Statement of compliance** –

These consolidated financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS"), as issued by the International Accounting Standards Board. These consolidated financial statements have been prepared using the accounting policies in note 3.

**(b) Consolidation –**

These consolidated financial statements reflect the accounts of the Company and its previously wholly owned subsidiary, Citagenix.

Prior to November 1, 2022, the Company operated as two operating segments: Antibe (research and development of new pharmaceuticals) and Citagenix (a seller of tissue regenerative products servicing the orthopaedic and dental marketplaces). On November 1, 2022, the Company closed the sale of Citagenix.

The results of the operations of Citagenix to November 1, 2022 are recorded within income (loss) from discontinued operations in the consolidated statements of loss and comprehensive loss (note 5).

All intercompany balances and transactions have been eliminated on consolidation.

## 2. BASIS OF PRESENTATION *(continued)*

**(c) Going concern –**

The consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As at March 31, 2023, the Company incurred a net loss from continuing operations for the year then ended of $19,291, had negative cash flows from operations of $16,305 and an accumulated deficit of $130,491.

Until such time as the Company's pharmaceutical products are patented and approved for sale, the Company's liquidity requirements are dependent on its ability to raise additional capital by selling additional equity, from licensing agreements of its lead compound, from proceeds from the exercise of stock options and common share purchase warrants or by obtaining credit facilities. The Company's future capital requirements will depend on many factors, including, but not limited to, the market acceptance of its products and services. No assurance can be given that any such additional funding will be available or that, if available, it can be obtained on terms favourable to the Company.

All of the factors above indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern, which assumes the Company will continue its operations for the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the ordinary course of business. Management's plans to address these issues involve actively seeking capital investment and generating revenue and profit from the commercialization of its products. The Company's ability to continue as a going concern is subject to management's ability to successfully implement this plan. Failure to implement this plan could have a material adverse effect on the Company's financial condition and financial performance.

If the going concern assumption were not appropriate for these consolidated financial statements, then adjustments would be necessary to the carrying value of assets and liabilities, the reported revenue and expenses, and the classifications used in the consolidated statements of financial position. The consolidated financial statements do not include adjustments that would be necessary if the going concern assumption were not appropriate.

## 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, ESTIMATES, JUDGMENTS and ASSUMPTIONS

**Cash –**

Cash includes cash and liquid investments with a term to maturity of 90 days or less when acquired.

**Inventory –**

Inventory consists of ready for sale goods. Inventory is valued at the lower of cost and net realizable value. Cost is determined based on the average cost. Net realizable value is the estimated selling price less the estimated costs necessary to make the sale. The Company monitors inventory to determine when inventory values are not recoverable and when a write-down is necessary.

**Property and equipment –**

Property and equipment are stated at cost or deemed cost less accumulated depreciation and accumulated impairment losses. Property and equipment are amortized over their estimated useful life at the following rates and methods:

| | | |
|---|---|---|
| Furniture and fixtures | 20% per annum | declining balance method |
| Computer equipment | 3 years | straight-line method |
| Leasehold improvements | 10 years | straight-line method |
| Vehicles | 5 years | straight-line method |

## 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, ESTIMATES, JUDGMENTS and ASSUMPTIONS *(continued)*

The Company prorates depreciation for acquisitions made during the year.

The depreciation method, useful life and residual values are assessed annually.

When an item of property and equipment comprises significant components with different useful lives, the components are accounted for as separate items of property or equipment. Expenditures incurred to replace a component of an item of property or equipment that is accounted for separately are capitalized.

Gains and losses on disposal of property and equipment are determined by comparing the proceeds from disposal with the carrying amount of property and equipment and are recognized within other income (loss) in the consolidated statements of loss and comprehensive loss.

**Intangible assets –**

Intangible assets with finite lives are stated at cost less accumulated amortization. Amortization is based on the estimated useful life of the asset and is calculated as follows:

| | | |
|---|---|---|
| Trademarks and brands | 10 years | straight-line method |
| License and customer lists | 10 years | straight-line method |
| Patents | 17 years | straight-line method |

**Impairment of non-financial assets –**

The Company's property and equipment and intangible assets with finite lives are reviewed for indications of impairment whenever events or changes in circumstances indicate that their carrying amounts may not be recoverable. If indication of impairment exists, the asset's recoverable amount is estimated.

An impairment loss is recognized when the carrying amount of an asset, or its cash-generating unit ("CGU"), exceeds its recoverable amount. A CGU is the smallest identifiable group of assets that generates cash inflows that are largely independent of the cash inflows from other assets or groups of assets. Impairment losses are recognized in profit and loss for the year. Impairment losses recognized in respect of CGUs are allocated first to reduce the carrying amount of any goodwill allocated to the CGUs and then to reduce the carrying amount of the other assets in the unit on a pro-rata basis.

The recoverable amount is the greater of the CGU's fair value less costs of disposal and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. For an asset that does not generate largely independent cash inflows, the recoverable amount is determined for the CGU to which the asset belongs.

An impairment loss is reversed if there is an indication that there has been a change in the estimates used to determine the recoverable amount. An impairment loss is reversed only to the extent that the asset's carrying amount does not exceed the carrying amount that would have been determined, net of depreciation or amortization, if no impairment loss had been recognized.

Intangible assets that are not yet available for use are not amortized but are tested for impairment at least annually or sooner if there is an indication of impairment.

## 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, ESTIMATES, JUDGMENTS and ASSUMPTIONS *(continued)*

**Related party transactions –**

Parties are considered to be related if one party has the ability, directly or indirectly, to control the other party or exercise significant influence over the other party in making financial and operating decisions. Parties are also considered to be related if they are subject to common control or common significant influence. Related parties may be individuals or corporate entities. A transaction is considered to be a related party transaction when there is a transfer of resources or obligations between related parties.

**Leases –**

IFRS 16, *Leases,* sets out the principles for the recognition, measurement, presentation and disclosure of leases and requires lessees to account for all leases under a single on-balance sheet model, with certain exemptions. The standard includes two recognition exemptions for lessees – leases of "low-value" assets and short-term leases with a lease term of 12 months or less. At the commencement date of a lease, a lessee will recognize a liability to make lease payments and an asset representing the right to use the underlying asset during the lease term.

Lessees will be required to separately recognize the interest expense on the lease liability and the depreciation expense on the right-of-use asset. Lessees are also required to remeasure the lease liability upon the occurrence of certain events such as a change in lease term.

The Company recognizes a right-of-use asset based on the amount equal to the lease liability, adjusted for any related prepaid and accrued lease payments previously recognized. The lease liability is recognized based on the present value of remaining lease payments, discounted using the incremental borrowing rate at the date of initial application of the standard or inception of the lease. The lessee will generally recognize the amount of the remeasurement of the lease liability as an adjustment to the right-of-use asset.

**Income taxes –**

Income taxes are accounted for using the liability method. Deferred income tax assets and liabilities are recognized based on the temporary differences between the assets and liabilities for accounting purposes and the amounts used for tax purposes and the benefit of unutilized tax losses for which it is probable they will be realized and carried forward to future years to reduce income taxes. Deferred income tax assets and liabilities are not recognized if the temporary differences arise from goodwill or from initial recognition of other assets and liabilities in a transaction that affects neither the taxable profit nor the accounting profit. Deferred income tax assets and liabilities are measured using tax rates enacted by tax laws or substantively enacted for the years in which deferred income tax assets are likely to be realized or deferred income tax liabilities settled. The effect of a change in tax rates on deferred income tax assets and liabilities is included in loss and comprehensive loss in the period when the change is substantially enacted.

**Deferred share issuance costs –**

These are costs related directly to the proposed issuance of shares by the Company pursuant to private placements and public share offerings. Upon completion of the share issuance, these costs are charged against share capital. Such costs are recognized as an expense in the event that it is determined that such transaction will not be completed.

## 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, ESTIMATES, JUDGMENTS and ASSUMPTIONS *(continued)*

**Government grants and investment tax credits –**

Amounts received or receivable resulting from government assistance programs are recognized when there is reasonable assurance that the amount of government assistance will be received, and all attached conditions will be complied with. When the amount relates to an expense item, it is recognized into income as a reduction to the costs that it is intended to compensate. When the amount relates to an asset, it reduces the carrying amount of the asset and is then recognized as income over the useful life of the depreciable asset by way of a reduced depreciation charge.

Investment tax credits ("ITCs") receivable are amounts refundable from the Canadian federal and provincial governments under the Scientific Research & Experimental Development ("SR&ED") incentive program. The amounts claimed under the program represent the amounts submitted by management based on research and development costs paid during the year and include a number of estimates and assumptions made by management in determining the eligible expenditures. ITCs are recorded when there is reasonable assurance that the Company will realize the ITCs. Recorded ITCs are subject to review and approval by tax authorities and, therefore, could be different from the amounts recorded.

**Research and development expense –**

Research costs are expensed as incurred. Development costs are expensed in the year incurred unless they meet certain criteria for capitalization. No development costs have been capitalized to date.

**Revenue recognition –**

Product sales

Revenue from product sales is recognized when control of the goods is transferred to the customer at an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods. In certain circumstances, returns or exchange of products are allowed under the Company's policy or the Company may provide discounts or allowances, which gives rise to variable consideration. The variable consideration is estimated using the expected value method as this best predicts the amount of variable consideration to which the Company is entitled.

License revenue

The Company may enter into license agreements for the development and/or commercialization of products in certain territories. IFRS 15, *Revenue from Contracts with Customers*, includes specific guidance for accounting for licenses of intellectual property, which requires revenue to be recorded either over time or at a point in time, depending on whether the customer has the "right to access" or the "right to use" the intellectual property. For licenses that provide the customer with the right to access the intellectual property, revenue is recognized throughout the license period. For licenses that provide the customer with the right to use the intellectual property, revenue is deferred and amortized to the consolidated statements of loss and comprehensive loss at a point in time where the customer can first use and benefit from the license.

Costs to obtain a contract – Incremental costs incurred to obtain a contract are capitalized as a contract asset on the consolidated statements of financial position. These costs are deferred and amortized to the consolidated statements of loss and comprehensive loss at a point in time where the customer can first use and benefit from the license. The contract assets are tested for impairment annually, or if there are indicators of impairment.

Financing component – Agreements entered into with licensing partners often include an upfront fee upon execution of the agreement. If considered significant in the context of the arrangement, these upfront fees are accounted for as a financing component.

## 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, ESTIMATES, JUDGMENTS and ASSUMPTIONS *(continued)*

**Stock-based compensation –**

The Company accounts for options and warrants using the fair value-based method of accounting for stock-based compensation. Fair values are determined using the Black-Scholes-Merton option-pricing model ("BSM"). Management exercises judgment in determining the underlying share price volatility, expected life of the option, expected forfeitures and other parameters of the calculations. Compensation costs are recognized over the vesting period as an increase to stock-based compensation expense and contributed surplus. If, and when, stock options and warrants are ultimately exercised, the applicable amounts of contributed surplus and common share purchase warrants are transferred to share capital.

The Company accounts for restricted share units ("RSUs") using the fair market value on the date of the grant. Compensation costs are recognized over the vesting period as an increase to stock-based compensation expense and contributed surplus. When RSUs are redeemed, the applicable amount of contributed surplus is transferred to share capital.

**Broker warrants –**

Warrants issued in a public or private placement to brokers are accounted for under IFRS 2, *Share-based Payments,* and are classified as equity.

**Loss per share –**

Basic loss per share is calculated on the basis of loss attributable to the holders of Common Shares divided by the weighted average number of Common Shares outstanding during the year. Diluted per share amounts are calculated giving effect to the potential dilution that would occur if securities or other contracts to issue common shares were exercised or converted to Common Shares. The treasury stock method assumes that proceeds received from the exercise of in-the-money stock options and common share purchase warrants are used to repurchase Common Shares at the prevailing market rate. Diluted loss per share is equal to basic loss per share when the effect of otherwise dilutive securities is anti-dilutive.

**Provisions –**

The Company recognizes a provision when it has a present obligation (legal or constructive) as a result of a past event, it is probable it will be required to settle the obligation, and it can make a reliable estimate of its amount. The amount it recognizes as a provision is its best estimate of the consideration required to settle the present obligation at the end of the reporting period, taking into account the surrounding risks and uncertainties. Where it measures a provision using the cash flows estimated to settle the present obligation, the carrying amount is the present value of those cash flows, calculated using a pre-tax discount rate reflecting the risks specific to the liability. The Company adjusts the liability at the end of each reporting period for the unwinding of the discount rate and for changes to the discount rate or to the amount or timing of the estimated cash flows underlying the obligation.

**Measurement of financial instruments –**

Classification and measurement

Except for certain trade receivables, under IFRS 9, *Financial Instruments* ("IFRS 9"), the Company initially measures a financial asset at its fair value plus, in the case of a financial asset not at fair value through profit or loss ("FVTPL"), transaction costs. Under IFRS 9, financial liabilities are subsequently measured at FVTPL, amortized cost, or fair value through other comprehensive income ("FVOCI").

## 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, ESTIMATES, JUDGMENTS and ASSUMPTIONS *(continued)*

The classification is based on two criteria: the Company's business model for managing the assets, and whether the instruments' contractual cash flows represent "solely payments of principal and interest" on the principal amount outstanding.

The financial instruments of the Company are classified as follows:

| | IFRS 9 |
|---|---|
| **Financial assets** | |
| Cash | Amortized cost |
| Term deposits | Amortized cost |
| Other receivables | Amortized cost |
| Deferred consideration receivable | Amortized cost |
| **Financial liabilities** | |
| Accounts payable and accrued liabilities | Amortized cost |

Financial instruments

Financial assets and liabilities are recognized when the Company becomes a party to the contractual provisions of the instrument. Financial assets are derecognized when the rights to receive cash flows from the assets have expired or have been transferred and the Company has transferred substantially all risks and rewards of ownership.

The purchase and sale of financial assets are recognized using trade date accounting. Financial liabilities are derecognized when the obligation is discharged, cancelled or expires.

Financial assets and liabilities are offset and the net amount reported when there is a legally enforceable right to offset the recognized amounts and there is an intention to settle on a net basis, or realize the asset and settle the liability simultaneously.

There are three measurement categories in which the Company classifies its financial assets:

- Amortized cost: Financial instruments that are held for collection of contractual cash flows, where those cash flows represent solely payments of principal and interest, are measured at amortized cost. Interest income from these financial instruments is recorded in net loss using the effective interest rate method.

- FVOCI: Debt instruments that are held for collection of contractual cash flows and for selling the financial instruments, where the financial instruments' cash flows represent solely payments of principal and interest, are measured at FVOCI. Movements in the carrying amount are taken through other comprehensive income (loss) ("OCI"), except for the recognition of impairment gains or losses, interest income and foreign exchange gains and losses that are recognized in net loss. When the financial instrument is derecognized, the cumulative gain or loss previously recognized in OCI is reclassified from equity to net loss and recognized in other gains (losses). Interest income from these financial instruments is included in interest using the effective interest rate method. Foreign exchange gains (losses) are presented in other gains (losses) and impairment expenses in other expenses.

- FVTPL: Financial instruments that do not meet the criteria for amortized cost or FVOCI are measured at FVTPL. A gain or loss on a financial instrument that is subsequently measured at FVTPL and is not part of a hedging relationship is recognized in net loss and presented net in comprehensive loss within other gains (losses) in the period in which it arises.

## 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, ESTIMATES, JUDGMENTS and ASSUMPTIONS *(continued)*

Financial liabilities are either classified as amortized cost or FVTPL. For financial liabilities held at amortized cost, when the Company revises its estimates of the amount and timing of payments, it will adjust the gross carrying amount of the amortized cost of a financial liability to reflect actual and revised estimated contractual cash flows. The Company recalculates the gross carrying amount of the amortized cost of the financial liability as the present value of the estimated future contractual cash flows that are discounted at the financial instrument's original effective interest rate. The adjustment is recognized in net loss.

Impairment of financial assets

At each reporting date, the Company assesses on a forward-looking basis the expected credit losses ("ECLs") associated with its financial instruments carried at amortized cost and whether there is objective evidence that a financial asset is impaired. Trade and other receivables are subject to lifetime ECLs, which are measured as the difference in the present value of the contractual cash flows that are due under the contract, and the cash flows that are expected to be received. The Company applies the simplified approach at each reporting date on its other receivables and considers current and forward-looking macro-economic factors that may affect historical default rates when estimating ECL.

Financial assets, together with the associated allowance, are written off when there is no realistic prospect of future recovery and all collateral has been realized or has been transferred to the Company. If, in a subsequent year, the amount of the estimated impairment loss increases or decreases because of an event occurring after the impairment was recognized, the previously recognized impairment loss is increased or decreased by adjusting the carrying value of the loan or receivable. If a past write-off is later recovered, the recovery is recognized in the consolidated statements of loss and comprehensive loss.

**Significant estimates, judgments and assumptions**

The preparation of these consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, if any, as at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. Actual results may vary from the current estimates. These estimates are reviewed periodically and, as adjustments become necessary, they are reported in income in the year in which such adjustments become known. Significant estimates in these consolidated financial statements include the impairment of intangible assets not yet subject to amortization, the completeness of the accrual for research and clinical trial expenses, and inputs related to the calculation of stock-based compensation expense.

Valuation of intangible assets not yet subject to amortization

Intangible assets not currently being amortized are tested for impairment annually or more frequently if events or changes in circumstances indicate that they might be impaired. For the purpose of measuring recoverable amounts, assets are grouped at the lowest levels for which there are separately identifiable cash inflows or cash-generating units ("CGUs"). As at March 31, 2023, the Company is one CGU. An impairment loss is recognized for the amount by which the carrying amount exceeds its recoverable amount. Recoverable amount is the higher of an asset's fair value less costs of disposal and value in use. When performing the annual impairment test as at March 31, 2023, the Company determined the recoverable amount using a value-in-use approach and prepared a discounted cash flow model. Significant assumptions used within the discounted cash flow model are disclosed within note 8.

## 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, ESTIMATES, JUDGMENTS and ASSUMPTIONS *(continued)*

Completeness of the accrual for research and clinical trial expenses

The Company's determination of accrued research and clinical trial costs at each reporting period requires significant judgment, as estimates are based on a number of factors, including management's knowledge of the research and development programs and associated timelines, invoicing to date from third-party vendors, and the terms and conditions in the contractual arrangements including amendments or ancillary agreements. The completeness of research and clinical trial accruals is subject to risk of estimation uncertainty related to services having been received where invoices are not received from third-party vendors in a timely manner prior to the time the consolidated financial statements are issued.

Vesting period for performance-based restricted share units

The Company issues certain RSUs that vest depending on specified operational performance conditions. The RSUs are to be settled with the Company's shares. Details of the RSU grants are disclosed within note 10. When calculating the share-based compensation expense for the year, the Company estimates the likelihood and timing of achieving the performance conditions.

New and amended standards and interpretations

A number of amendments to standards have been issued but are not yet effective for the financial year ended March 31, 2023, and accordingly, have not been applied in preparing these consolidated financial statements. The Company reviewed these amendments and concluded that there would be no impact on adoption given their nature and applicability.

## 4. AMALGAMATION WITH RELATED PARTY

On May 7, 2021, the Company announced that the Boards of Directors of Antibe and Holdings agreed to combine the companies in an amalgamation transaction pursuant to which shareholders of Holdings would receive Common Shares of the Company in exchange for their shares of Holdings. The companies were combined in a three-cornered amalgamation transaction pursuant to which Holdings amalgamated with a newly incorporated subsidiary of the Company. This related party transaction closed on June 3, 2021.

On June 3, 2021, the Company issued an aggregate of 5,873,092 Common Shares for a total consideration of $25,980, to acquire all of the issued and outstanding shares of Holdings, following which Holdings ceased to exist. The amalgamation was accounted for as an acquisition of the underlying assets of Holdings.

The fair value of the assets acquired included $26,051 in intangible assets related to intellectual property, $65 in cash, net of amounts owed to Antibe for advances made in the quarter prior to the amalgamation, $28 in other assets, $130 in income taxes payable and $34 in other current liabilities. The fair value of the intellectual property was determined based on the relief from royalty method. The Company also capitalized $301 of costs directly related to the amalgamation of the intellectual property acquired. The intellectual property acquired is not yet subject to amortization as it is classified as not yet available for use in accordance with the Company's accounting policies.

At the time of acquisition, these new shares accounted for approximately 11.4% of the ownership of Antibe on a post-transaction basis. Shares issued to Company insiders, who collectively owned approximately 37.5% of the outstanding shares of Holdings, were subject to lock-up agreements, with half of them released 120 days after closing and the balance released 240 days after closing.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 5. SALE OF CGX

On November 1, 2022, the Company completed the sale of its wholly owned subsidiary, CGX. The $6,500 transaction involves a guaranteed $3,500 divided into four equal payments over three years, the first of which was received at closing. The remaining $3,000 is subject to Citagenix achieving sales milestones over the three-year period following closing. In accordance with the agreement, the Company received proceeds totaling $1,155 offset by $28 transaction costs, comprising the first of the four guaranteed payments of $875 and an adjustment of $280 in excess working capital. Under the terms of the agreement, the $250 deposit from the purchaser previously held in escrow was released at closing and included in the $875 payment. On February 15, 2023, the agreement was amended to include an additional $1,000 of contingent consideration and a one-year extension, bringing the total consideration to $7,500. The fair value of the contingent consideration was determined to be $0 as of the date of the sale and $0 as of March 31, 2023. The present value of the deferred consideration was determined to be $2,255 as of the date of the sale and $2,328 as of March 31, 2023, using a discount rate of 10%.

The results of Citagenix to November 1, 2022 are presented in the consolidated statements of loss and comprehensive loss as income (loss) from discontinued operations. The Company has also derecognized the related assets and liabilities, with the resulting gain recognized within income (loss) from discontinued operations.

The results of Citagenix for the years ended March 31, 2023 and 2022 are presented below:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Revenue | **6,987** | 13,511 |
| Cost of goods sold | **3,945** | 8,145 |
| Gross profit | **3,042** | 5,366 |
| Expenses | **2,618** | 5,176 |
| Loss on sale of CGX | **348** | - |
| Income before tax from discontinued operations | **76** | 190 |
| Provision for income taxes | **260** | - |
| **Income (loss) from discontinued operations** | **(184)** | 190 |

The major classes of assets and liabilities on the day of sale and as at March 31, 2022 are presented below:

| | **November 1, 2022** | **March 31, 2022** |
|---|---|---|
| | $ | $ |
| Cash | **836** | **-** |
| Accounts receivable, net of allowances | **1,054** | **1,176** |
| Inventory | **2,495** | **2,259** |
| Prepaid expenses | **53** | **64** |
| Intangible assets | **804** | **804** |
| Property and equipment | **317** | **305** |
| Deposits | **7** | **24** |
| Accounts payable and accrued liabilities | **(1,836)** | **(1,878)** |
| **Net Assets held for sale** | **3,730** | **2,754** |

Cash flow provided by Citagenix operating activities for the year ended March 31, 2023 was $175 (2022 – $437).

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 6. TERM DEPOSITS

As at March 31, 2023, the Company held investments of $32,137 (2022 – $20,000) in five separate Canadian currency GICs having terms of six, nine and twelve months, and one USD currency GIC having a term of nine months. Interest rates range from 4.12% to 5.25%.

## 7. OTHER RECEIVABLES

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| SR&ED | **46** | 774 |
| Deferred consideration receivable *[note 5]* | **875** | - |
| Interest receivable | **508** | 3 |
| Harmonized Sales Tax receivable | **186** | 344 |
| | **1,615** | 1,121 |
| Employee advances *[note 9]* | **40** | 36 |
| | **1,655** | 1,157 |

## 8. INTANGIBLE ASSETS

Intangible assets consist of the following:

| | **Trademarks and brands** | **Intellectual property** | **Customer lists** | **Patents** | **Total** |
|---|---|---|---|---|---|
| | $ | $ | $ | $ | $ |
| **Cost** | | | | | |
| As at March 31, 2021 | 1,877 | - | 177 | 19 | 2,073 |
| Additions | - | 26,352 | - | - | 26,352 |
| Transferred to assets held for sale *[note 5]* | (804) | - | - | - | (804) |
| As at March 31, 2022 | 1,073 | 26,352 | 177 | 19 | 27,621 |
| As at April 1, 2022 | 1,073 | 26,352 | 177 | 19 | 27,621 |
| As at March 31, 2023 | 1,073 | 26,352 | 177 | 19 | 27,621 |
| **Amortization** | | | | | |
| As at March 31, 2021 | 1,026 | - | 159 | 19 | 1,204 |
| Charge for the year | 47 | - | 18 | - | 65 |
| As at March 31, 2022 | 1,073 | - | 177 | 19 | 1,269 |
| As at April 1, 2022 | 1,073 | - | 177 | 19 | 1,269 |
| As at March 31, 2023 | 1,073 | - | 177 | 19 | 1,269 |
| **Carrying amount** | | | | | |
| As at March 31, 2022 | - | 26,352 | - | - | 26,352 |
| As at March 31, 2023 | **-** | **26,352** | **-** | **-** | **26,352** |

## 8. INTANGIBLE ASSETS *(continued)*

The intellectual property is not yet subject to amortization and is tested for impairment at least annually, or sooner if there is an indication of impairment. The cash flows from the intellectual property acquired are monitored within the single Antibe CGU.

The Company performed its annual impairment test on March 31, 2023 and concluded that the recoverable amount of the Antibe CGU was not less than its carrying value. The Company determined the recoverable amount of the Antibe CGU using a value-in-use approach through a discounted cash flow analysis. Significant assumptions used in the discounted cash flow analysis included projections for the future costs of clinical trials, revenue projections, probability of commercialization, and the discount rate. These assumptions are affected by expectations about future market and economic conditions including the success of clinical trials, obtaining regulatory approvals, future product pricing and the future demand for these pharmaceutical products.

## 9. RELATED PARTY TRANSACTIONS

On December 3, 2020, the Company completed the sale of 100% of the shares of its wholly owned subsidiary, BMT Medizintechnik GmbH, for cash consideration of €1 (one euro). Antibe has provided a loan to the purchaser in the amount of $157 (€100 thousand) for working capital purposes. The purchaser has subsequently experienced financial difficulties, and as a result the Company decided to write off this loan.

Refer to note 4 for information regarding the amalgamation with Antibe Holdings Inc.

Employee cash advances as at March 31, 2023, totalled $40 (March 31, 2022 - $36). Currently, the Company has one officer receiving cash advances.

## 10. SHARE CAPITAL

**(a) Authorized –**

The Company has an unlimited number of authorized Common Shares without par value.

**(b) Stock options –**

On November 15, 2022, the Company granted options of 222,500 Common Shares with an exercise price of $0.48 per share to its directors, officers, employees, and certain consultants. The total fair value of these options, calculated using the BSM, is $105. All options are subject to a service condition: one third (1/3) of the options granted will vest on each of the first, second and third anniversaries of the grant date.

On November 15, 2022, the Company also granted 117,500 performance options to key senior executives. Vesting of these options is subject to the successful achievement of certain goals that are designed to reflect the successful execution of the Company's business plan and strategy. The estimated fair value of these options, calculated using the BSM, is $56. As at March 31, 2023, it was determined that the probability and timing of achieving the performance criteria was greater than 50%, and as such, $9 was expensed during the period and included in contributed surplus.

For the year ended March 31, 2023, a total of $38 related to stock options has been included within stock-based compensation in the consolidated statements of loss and comprehensive loss.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 10. SHARE CAPITAL *(continued)*

The following is a summary of all options to purchase Common Shares that are outstanding as at March 31, 2023 and 2022, as well as details on exercise prices and expiry dates:

| | **2023** | | 2022 | |
|---|---|---|---|---|
| | **Options** | **Weighted average price** | Options | Weighted average price |
| | | $ | | $ |
| **Balance, beginning of the year** | **1,274,435** | **2.93** | 1,269,035 | 2.95 |
| Granted during the year | **340,000** | **0.48** | 20,000 | 0.91 |
| Forfeited during the year | **(184,323)** | **2.41** | (14,600) | 1.96 |
| **Balance, end of the year** | **1,430,112** | **1.83** | 1,274,435 | 2.93 |

| **Number of options** | **Exercise price** | **Expiry date** |
|---|---|---|
| | $ | |
| 15,000 | 5.50 | October 21, 2023 |
| 66,000 | 0.68 | January 11, 2024 |
| 80,500 | 6.60 | March 4, 2024 |
| 20,000 | 0.91 | November 15, 2024 |
| 36,000 | 1.40 | July 13, 2025 |
| 156,272 | 1.45 | March 9, 2026 |
| 687,000 | 2.00 | March 31, 2027 |
| 15,152 | 4.95 | April 11, 2028 |
| 4,188 | 4.00 | May 8, 2028 |
| 10,000 | 2.90 | March 11, 2029 |
| 340,000 | 0.48 | November 15, 2032 |
| 1,430,112 | | |

The number of options exercisable as at March 31, 2023, is 1,090,112 and the weighted average exercise price of these options is $2.25.

The total fair value of options not yet recognized as an expense is $128.

The following assumptions were used in the BSM to determine the fair value of stock options granted in the years ended March 31, 2023 and 2022:

| | **2023** | 2022 |
|---|---|---|
| Weighted average risk-free interest rate | **3.13%** | 1.13% |
| Weighted average expected volatility | **122%** | 98% |
| Expected dividend yield | **-** | - |
| Weighted average expected life of options | **10 years** | 3 years |
| Weighted average share price | **$0.50** | $0.88 |
| Weighted average exercise price | **$0.48** | $0.91 |

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 10. SHARE CAPITAL *(continued)*

**(c) Restricted share unit plan –**

On May 1, 2021, and August 16, 2021, the Company granted 24,000 and 21,779 RSUs, respectively, to two consultants in exchange for consulting services. The RSUs vest quarterly beginning on the grant date.

On May 1, 2021, the Company granted 10,000 RSUs in connection with the appointment of a new Director of Clinical Operations. The RSUs are subject to time-based vesting; one-third of the RSUs granted will vest on each of the first, second and third anniversaries of the grant date.

On November 15, 2021, the Company granted 380,000 RSUs to directors, officers, employees and consultants. All RSUs are subject to a service condition: one third (1/3) of the RSUs granted will vest on each of the first, second and third anniversaries of the grant date. In the case of RSUs granted to one consultant, all RSUs vested on the grant date.

Included in the RSUs granted on November 15, 2021, are 140,000 performance RSUs granted to key senior executives. Vesting of these RSUs is subject to the successful achievement of certain goals that are designed to reflect the successful execution of the Company's business plan and strategy. As at March 31, 2023, it was determined that the probability and timing of achieving the performance criteria was greater than 50%, and as such, these performance RSUs were expensed and included in contributed surplus.

The following is a summary of all RSUs for Common Shares that are outstanding as at March 31, 2023 and 2022:

| | **2023** | 2022 |
|---|---|---|
| | **RSUs** | RSUs |
| **Balance, beginning of the year** | **4,060,164** | 4,141,325 |
| Granted during the year | **-** | 435,779 |
| Redeemed during the year | **(517,816)** | (460,939) |
| Forfeited during the year | **(5,083)** | (56,001) |
| **Balance, end of the year** | **3,537,265** | 4,060,164 |

Based on the share price on the date of granting, the total fair value of RSUs not yet recognized as an expense is $1,290. During the year, the Company also deemed the RSUs granted to Citagenix employees to be vested. This resulted in an acceleration of the related stock-based compensation expense of $130.

For the year ended March 31, 2023, a total of $2,770 related to RSUs has been included within stock-based compensation in the consolidated statements of loss and comprehensive loss.

**(d) Common share purchase warrants –**

On June 15, 2022, the Company announced that it is extending the expiry date (the "Warrant Extension") and amending the exercise price (the "Amended Exercise Price") of 3,117,957 Common Share purchase warrants ("Warrants") of the Company.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 10. SHARE CAPITAL *(continued)*

The Warrants, pursuant to the Warrant Extension, will expire on December 31, 2023 and, pursuant to the Amended Exercise Price, be exercisable into a Common Share of the Company at $1.80 per Common Share, as depicted in the table below:

| Issue date | Number of warrants | Issued exercise price | Amended exercise price | Original expiry date | Amended expiry date | Effective date |
|---|---|---|---|---|---|---|
| June 30, 2020 | 2,373,401 | $6.00 | $1.80 | June 30, 2022 | December 31, 2023 | June 30, 2022 |
| August 13, 2019 | 748,555 | $4.00 | $1.80 | August 13, 2022 | December 31, 2023 | June 30, 2022 |

None of the Warrants are held by insiders of the Company.

The Toronto Stock Exchange approved the Warrant Extension and Amended Exercise Price with an effective date for the amendments of June 30, 2022. These amendments had no impact to the presentation of shareholders' equity since the Company's accounting policy is to not record an adjustment to shareholders' equity when the warrants continue to be classified as equity under IAS 32.

The following is a summary of all warrants to purchase Common Shares that are outstanding as at March 31, 2023 and 2022, as well as details on exercise prices and expiry dates:

| | **2023** | | 2022 | |
|---|---|---|---|---|
| | **Warrants** | **Weighted average price** | Warrants | Weighted average price |
| | | $ | | $ |
| **Balance, beginning of the year** | **7,389,166** | **6.31** | 7,906,117 | 6.12 |
| Exercised during the year | **-** | **-** | (42,640) | 3.00 |
| Expired during the year | **(903,460)** | **4.87** | (474,311) | 3.47 |
| **Balance, end of the year** | **6,485,706** | **4.76** | 7,389,166 | 6.31 |

The weighted average price for the year ended March 31, 2023 includes the above-mentioned amended exercise price of warrants granted June 30, 2020 and August 13, 2019.

| Number of warrants | Exercise price | Expiry date |
|---|---|---|
| | $ | |
| 3,121,956 | 1.80 | December 31, 2023 |
| 3,363,750 | 7.50 | February 24, 2024 |
| 6,485,706 | | |

## 11. LOSS PER SHARE

Basic loss per share is calculated by dividing the net loss attributable to common shareholders by the weighted average number of Common Shares outstanding during the year. All unexercised share options and warrants were excluded from calculating diluted loss per share as the effect of their issuance would be anti-dilutive.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 12. RESEARCH AND DEVELOPMENT EXPENSES

The nature of the research and development expenses for the years ended March 31, 2023 and 2022, is summarized as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Salaries and wages | **1,905** | 2,399 |
| Professional and consulting fees | **1,533** | 412 |
| Research and clinical trial costs | **7,862** | 11,633 |
| SR&ED rebate | **8** | (86) |
| **Total research and development expenses** | **11,308** | 14,358 |

Non-refundable advance payments for goods and services that will be used or rendered in future research and development activities are recorded as a prepaid expense and recognized as an expense within "Research and clinical trial costs" in the period that the related goods are consumed or services are performed. As at March 31, 2023, $777 (2022 – $569) was recorded as a prepaid expense.

## 13. GENERAL AND ADMINISTRATIVE EXPENSES

The nature of the general and administrative expenses for the years ended March 31, 2023 and 2022, is summarized as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Salaries and wages | **1,858** | 1,799 |
| Professional and consulting fees | **3,625** | 2,903 |
| Office expenses | **346** | 442 |
| Other expenses | **270** | 298 |
| **Total general and administrative expenses** | **6,099** | 5,442 |

## 14. STOCK-BASED COMPENSATION

The function of the stock-based compensation expense for the years ended March 31, 2023 and 2022, is summarized as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| General and administrative | **1,785** | 3,642 |
| Research and development | **1,023** | 1,879 |
| **Total stock-based compensation** | **2,808** | 5,521 |

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 15. SELLING AND MARKETING EXPENSES

The nature of the selling and marketing expenses for years ended March 31, 2023 and 2022, is summarized as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Advertising and promotion | **75** | 140 |
| Travel and entertainment | **256** | 68 |
| **Total selling and marketing expenses** | **331** | 208 |

## 16. FINANCE AND RELATED COSTS (INCOME)

The components of the finance and related costs (income) for the years ended March 31, 2023 and 2022, are as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Interest and bank charges | **8** | 8 |
| Foreign currency transactions | **90** | (5) |
| Finance Income | **(1,353)** | (282) |
| **Total finance and related costs** | **(1,255)** | (279) |

## 17. INCOME TAXES

The income tax provision recorded differs from the income tax obtained by applying the statutory income tax rate of 26.50% (2022 – 26.50%) to the loss before income taxes for the year, and is reconciled as follows:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Loss before income taxes from continuing operations | **(19,291)** | (25,250) |
| Expected income tax recovery at the combined basic federal and provincial tax rate: | **(5,112)** | (6,691) |
| Decrease (increase) resulting from: | | |
| Non-deductible expenses | **765** | 1,452 |
| Others | **(160)** | (101) |
| Amount related to unrecognized deferred tax assets | **4,507** | 5,340 |
| Provision for (recovery of) income taxes | **-** | - |

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 17. INCOME TAXES *(continued)*

The Company has incurred non-capital losses of $59,195 for tax purposes, which are available to reduce future taxable income. Such benefits will be recorded as an adjustment to the tax provision in the year realized. The losses expire as follows:

| | **$** |
|---|---|
| In the year ending March 31, | |
| 2038 | 1,079 |
| 2039 | 9,149 |
| 2040 | - |
| 2041 | 4,328 |
| 2042 | 23,253 |
| 2043 | 21,386 |
| | 59,195 |

As at March 31, 2023, the Company has incurred capital losses of $3,040 which is applicable to future years and has no expiry date.

The cumulative carry-forward pool of SR&ED expenditures as at March 31, 2023, applicable to future years, with no expiry date, is $25,386.

## 18. DEFERRED INCOME TAXES

The recognized temporary differences and tax losses are attributable to the following:

| | **2023** | 2022 |
|---|---|---|
| | $ | $ |
| Amount related to tax loss | **-** | 123 |
| Amount related to capital property | **340** | 217 |
| Amount related to deferred contract costs | **(340)** | (340) |
| Net deferred income tax liabilities | **-** | - |

Deferred tax expense of nil (2022 – nil) related to the foreign exchange translation gains was recognized in other comprehensive loss for the year.

Deferred tax assets have not been recognized in respect of the following temporary differences:

| | **2023** | 2022 |
|---|---|---|
| | **$** | **$** |
| Amount related to tax loss carryforwards | **15,687** | 8,272 |
| Amount related to SR&ED expenditures | **6,727** | 5,943 |
| Amount related to donations | **-** | 21 |
| Amount related to ITC, net of tax | **2,362** | 2,065 |
| Amount related to ORDTC, net of tax | **329** | 291 |
| Amount related to share issuance costs | **616** | 984 |
| Amount related to capital losses | **403** | 1,535 |
| Amount related to deferred revenue | **7,322** | 7,322 |
| | **33,446** | 26,433 |

## 18. DEFERRED INCOME TAXES *(continued)*

Deferred income tax assets have not been recognized in respect of these items because it is not probable that future taxable profit will be available against which the Company will be able to use these benefits.

## 19. FINANCIAL INSTRUMENTS

The carrying values of cash, term deposits, other receivables and accounts payable and accrued liabilities approximate fair values due to the relatively short-term maturities of these instruments.

Financial instruments that are measured subsequent to initial recognition at fair value are grouped into a hierarchy based on the degree to which the fair value is observable. Level 1 fair value measurements are derived from unadjusted, quoted prices in active markets for identical assets or liabilities. Level 2 fair value measurements are derived from inputs other than quoted prices included within Level 1 that are observable for the asset or liability directly or indirectly. Level 3 fair value measurements are derived from valuation techniques that include inputs for the assets or liabilities that are not based on observable market data.

Financial instruments classified as Level 1 include cash and term deposits. At the current time, the Company does not have financial instruments classified in Level 2 or Level 3.

## 20. CAPITAL RISK MANAGEMENT

The Company's primary objective with respect to its capital management is to ensure that it has sufficient cash resources to fund the research, development and patent of drugs. To secure the additional capital necessary to pursue these plans, the Company may attempt to raise additional funds through the issuance of equity.

The Company includes the following in its definition of capital: share capital, common share purchase warrants, contributed surplus and accumulated deficit, which, for the year ended March 31, 2023, totalled $40,166 (2022 – $56,833). The Company is not subject to externally imposed capital requirements.

## 21. FINANCIAL RISK MANAGEMENT

The Company is exposed to a variety of financial risks by virtue of its activities: credit risk, liquidity risk, foreign currency risk and interest rate risk. The overall risk management program focuses on the unpredictability of financial markets and seeks to minimize potential adverse effects on financial performance.

Risk management is carried out by the officers of the Company as discussed with the Board of Directors. The officers of the Company are charged with the responsibility of establishing controls and procedures to ensure that financial risks are mitigated in accordance with the expectation of the Board of Directors as follows:

### Credit risk

The Company's credit risk is primarily attributable to other receivables and the excess of cash held in one financial institution over the deposit insurance limit set by the Canadian Deposit Insurance Corporation.

### Liquidity risk

Liquidity risk is the risk that the Company is not able to meet its financial obligations as they become due or can do so only at excessive cost. The Company manages its liquidity risk by forecasting cash flows and anticipated investing and financing activities. Officers of the Company are actively involved in the review and approval of planned expenditures, including actively seeking capital investment and generating revenue and profit from the commercialization of its products (note 2(c)).

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 21. FINANCIAL RISK MANAGEMENT *(continued)*

As at March 31, 2023, the Company's financial obligations, including applicable interest, are due as follows:

| | Less than 1 year | 1–2 years | After 2 years | Total |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Accounts payable and accrued liabilities | 2,764 | - | - | 2,764 |

**Foreign currency risk**

The functional and reporting currency of the Company is the Canadian dollar. The Company undertakes transactions denominated in foreign currencies, including US dollars and euros, and, as such, is exposed to currency risk due to fluctuations in foreign exchange rates against the Canadian dollar. The Company does not use derivative instruments to reduce exposure to foreign currency risk.

**Interest rate risk**

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The Company is not currently incurring any debt and is therefore not exposed to changes in interest rates.

## 22. DEFERRED REVENUE

On February 24, 2017, Antibe entered into an exclusive long-term license and distribution agreement ("License Agreement 1") with Laboratoires Acbel SA ("Acbel") for otenaproxesul in Albania, Algeria, Bulgaria, Greece, Jordan, Romania and Serbia (the "Territory"). Acbel is an affiliated holding company of Galenica SA in Greece. Under the terms of License Agreement 1, Antibe was issued an upfront payment of €800 (CAD$1,142) and is entitled to receive a 5% royalty on net sales of otenaproxesul in the Territory. The upfront revenue is reflected in deferred revenue until the point that Acbel can benefit from the license.

On September 4, 2018, Antibe entered into an exclusive licensing agreement ("License Agreement 2") with Kwangdong Pharmaceutical Co., Ltd. ("Kwangdong") for the development and commercialization of otenaproxesul in the Republic of Korea (the "Region"). Under the terms of License Agreement 2, Antibe was issued an upfront payment of US$1,000 (CAD$1,316), which is reflected in deferred revenue until the point that Kwangdong can benefit from the license. Under the terms of License Agreement 2, Antibe will be entitled to receive US$9 million in milestone payments. Fees paid to an agent used in obtaining License Agreement 2 have been recorded as deferred contract costs on the consolidated statements of financial position in the amount of $236 as at March 31, 2023 (2022 – $236).

On February 9, 2021, Antibe entered into an exclusive licensing agreement ("License Agreement 3") with Nuance Pharma (Shanghai) Co. Ltd. ("Nuance") for the development and commercialization of otenaproxesul in the Greater China region. The license provides Nuance with exclusive rights to commercialize otenaproxesul in China, Hong Kong, Macau, and Taiwan (the "Sector"). Under the terms of the agreement, Antibe was issued an upfront payment of US$20 million (CAD$25,231), which is reflected in deferred revenue until the point at which Nuance can benefit from the license. Additionally, Antibe will receive a double-digit royalty on net sales in the Sector and is entitled to receive US$80 million in development and sales milestones. Fees paid to an agent used in obtaining License Agreement 3 have been recorded as deferred contract costs on the consolidated statements of financial position in the amount of $1,047 as at March 31, 2023 (2022 – $1,047).

The amount of the upfront payments for all licenses is included on the consolidated statements of financial position as deferred revenue and will be recorded through the consolidated statements of loss and comprehensive loss at the same point when the license revenue is recognized.

The Company received no royalties from Acbel, Kwangdong or Nuance in the year ended March 31, 2023.

## 23. COMMITMENTS AND CONTINGENCIES

**Royalty agreement –**

On November 16, 2015, the Company announced the signing of an exclusive long-term license and distribution agreement with Knight Therapeutics Inc. ("Knight"), a leading Canadian specialty pharmaceutical company, for the Company's anti-inflammatory and pain drugs, otenaproxesul, ATB-352 and ATB-340, as well as the rights to other, future prescription drugs. Under the terms of the license agreement, the Company has granted Knight the exclusive commercial rights for the Company's drug candidates and other future prescription drugs in Canada, Israel, Russia and sub-Saharan Africa. The Company is entitled to royalties on annual sales, along with the potential for $10 million in payments for sales-based milestones.

The Company received no royalties from Knight in the year ended March 31, 2023.

In the normal course of business, the Company could be the subject of litigation or other potential claims. While management assesses the merits of each lawsuit and defends itself accordingly, the Company may be required to incur significant expenses or devote significant resources to defending itself against litigation.

The Company received notice of arbitral proceedings from Nuance relating to License Agreement 3, on January 21, 2022. Pursuant to License Agreement 3, Nuance is obligated to make up to US$80 million in payments to Antibe upon certain development and sales milestones, in addition to an upfront payment of US$20 million which has been paid. Nuance seeks to have the license rescinded and the upfront payment returned, alleging that Antibe failed to adequately share information concerning the risks of transaminase elevations related to otenaproxesul. The Company considers Nuance's claims to be without merit. The Company has engaged counsel to assist it with the arbitration proceedings, which have been brought under the Arbitration Rules of the Singapore International Arbitration Centre. Arbitration proceedings were held in May 2023 and a decision is pending.


**ANTIBE THERAPEUTICS INC.**

# UNAUDITED CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS

**For the Three and Nine Months Ended December 31, 2022 and 2021**

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Financial Position**
**As at December 31, 2022 and March 31, 2022**
(Expressed in thousands of Canadian dollars)
(Unaudited)

| | December 31, 2022 | March 31, 2022 |
|---|---|---|
| | $ | $ |
| **ASSETS** | | |
| **Current** | | |
| Cash | **10,529** | 34,807 |
| Term deposits *[note 5]* | **31,826** | 20,000 |
| Other receivables *[note 6]* | **1,591** | 1,157 |
| Prepaid expenses *[note 10]* | **580** | 768 |
| Assets held for sale *[note 4]* | **-** | 4,632 |
| Total current assets | **44,526** | 61,364 |
| **Non-current assets** | | |
| Deferred contract costs *[note 17]* | **1,283** | 1,283 |
| Loan receivable *[note 7]* | **159** | 159 |
| Deferred consideration receivable *[note 4]* | **1,409** | - |
| Intangible assets *[note 3]* | **26,352** | 26,352 |
| Total non-current assets | **29,203** | 27,794 |
| **TOTAL ASSETS** | **73,729** | 89,158 |
| **LIABILITIES** | | |
| **Current** | | |
| Accounts payable and accrued liabilities | **2,835** | 2,816 |
| Liabilities directly associated with assets held for sale *[note 4]* | **-** | 1,878 |
| Total current liabilities | **2,835** | 4,694 |
| **Non-current liabilities** | | |
| Deferred revenue *[note 17]* | **27,631** | 27,631 |
| Total non-current liabilities | **27,631** | 27,631 |
| **TOTAL LIABILITIES** | **30,466** | 32,325 |
| **SHAREHOLDERS' EQUITY** | | |
| Share capital | **140,865** | 139,547 |
| Common share purchase warrants *[note 8(c)]* | **10,264** | 10,264 |
| Contributed surplus | **19,077** | 18,038 |
| Deficit | **(126,943)** | (111,016) |
| **TOTAL SHAREHOLDERS' EQUITY** | **43,263** | 56,833 |
| **TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY** | **73,729** | 89,158 |

Commitments and contingencies *[note 18]*

*(Signed) Daniel Legault* Daniel Legault, Director
*(Signed) Robert Hoffman* Robert Hoffman, Director

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Loss and Comprehensive Loss**
**For the Three and Nine Months Ended December 31, 2022 and 2021**
(Expressed in thousands of Canadian dollars, except share and per share amounts)
(Unaudited)

| | **Three months ended December 31, 2022** | Three months ended December 31, 2021 | **Nine months ended December 31, 2022** | Nine months ended December 31, 2021 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| **EXPENSES** | | | | |
| Research and development *[note 10]* | **2,231** | 2,479 | **9,917** | 10,948 |
| General and administrative *[note 11]* | **1,555** | 1,285 | **4,415** | 4,273 |
| Stock-based compensation *[note 12]* | **809** | 1,430 | **2,357** | 4,673 |
| Selling and marketing *[note 13]* | **67** | 40 | **275** | 181 |
| Total expenses | **4,662** | 5,234 | **16,964** | 20,075 |
| **LOSS FROM CONTINUING OPERATIONS** | **(4,662)** | (5,234) | **(16,964)** | (20,075) |
| Finance and related costs (income) *[note 14]* | **2** | 17 | **89** | 5 |
| Finance income | **(459)** | (32) | **(998)** | (116) |
| **NET LOSS FROM CONTINUING OPERATIONS** | **(4,205)** | (5,219) | **(16,055)** | (19,964) |
| **DISCONTINUED OPERATIONS** | | | | |
| Income (loss) from discontinued operations *[note 4]* | **(111)** | 370 | **128** | 143 |
| **NET LOSS AND COMPREHENSIVE LOSS** | **(4,316)** | (4,849) | **(15,927)** | (19,821) |
| **Basic and diluted loss per share** *[note 9]* | **(0.08)** | (0.09) | **(0.30)** | (0.39) |
| **Basic and diluted weighted average number of shares outstanding** *[note 9]* | **52,320,976** | 51,822,023 | **52,188,528** | 50,354,256 |

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Changes in Shareholders' Equity**
**For the Nine Months Ended December 31, 2022 and 2021**
(Expressed in thousands of Canadian dollars, except share amounts)
(Unaudited)

| | Number of Common Shares | Share capital | Common Share purchase warrants | Contributed surplus | Deficit | Total shareholders' equity |
|---|---|---|---|---|---|---|
| | | $ | $ | $ | $ | $ |
| Balance, March 31, 2021 | 45,722,605 | 111,574 | 10,353 | 14,293 | (85,956) | 50,264 |
| Shares issued for exercised warrants | 42,640 | 217 | (89) | - | - | 128 |
| Shares issued for redeemed restricted share units *[note 8(b)]* | 234,324 | 295 | - | (295) | - | - |
| Shares issued on amalgamation with Antibe Holdings Inc. *[notes 3 and 7]* | 5,873,092 | 25,980 | - | - | - | 25,980 |
| Stock-based compensation | - | - | - | 4,673 | - | 4,673 |
| Net loss from continuing operations for the period | - | - | - | - | (19,964) | (19,964) |
| Income from discontinued operations | - | - | - | - | 143 | 143 |
| Balance, December 31, 2021 | 51,872,661 | 138,066 | 10,264 | 18,671 | (105,777) | 61,224 |
| Balance, March 31, 2022 | 52,099,276 | 139,547 | 10,264 | 18,038 | (111,016) | 56,833 |
| Shares issued for redeemed restricted share units *[note 8(b)]* | **369,533** | **1,318** | **-** | **(1,318)** | **-** | **-** |
| Stock-based compensation | **-** | **-** | **-** | **2,357** | **-** | **2,357** |
| Net loss from continuing operations for the period | **-** | **-** | **-** | **-** | **(16,055)** | **(16,055)** |
| Income from discontinued operations | **-** | **-** | **-** | **-** | **128** | **128** |
| **Balance, December 31, 2022** | **52,468,809** | **140,865** | **10,264** | **19,077** | **(126,943)** | **43,263** |

*See accompanying notes to the interim consolidated financial statements*

**ANTIBE THERAPEUTICS INC.**
**Interim Consolidated Statements of Cash Flows**
**For the Nine Months Ended December 31, 2022 and 2021**
(Expressed in thousands of Canadian dollars)
(Unaudited)

| | **2022** | 2021 |
|---|---|---|
| | $ | $ |
| **OPERATING ACTIVITIES** | | |
| Net loss from continuing operations for the period | **(16,055)** | (19,964) |
| Income from discontinued operations *[note 4]* | **128** | 143 |
| Items not affecting cash: | | |
| Stock-based compensation *[notes 8 and 12]* | **2,357** | 4,673 |
| Accretion interest | **(18)** | - |
| Depreciation of property and equipment | **-** | 180 |
| Amortization of intangible assets | **-** | 18 |
| Interest on capitalized lease payments | **4** | 15 |
| Loss on sale of Citagenix Inc. *[note 4]* | **98** | - |
| | **(13,486)** | (14,935) |
| Changes in non-cash balances: | | |
| Other receivables | **552** | 1,105 |
| Inventory | **(239)** | (424) |
| Prepaid expenses | **200** | 1,425 |
| Accounts payable and accrued liabilities | **(208)** | (196) |
| Income tax payable | **-** | (126) |
| Deferred tax liability | **260** | - |
| Net change in non-cash balances | **565** | 1,784 |
| **Cash flows used in operating activities** | **(12,921)** | (13,151) |
| **INVESTING ACTIVITIES** | | |
| Purchase of term deposits | **(38,125)** | - |
| Redemption of term deposits | **26,299** | - |
| Transaction costs on acquisition of assets, net of cash acquired *[note 3]* | **-** | (236) |
| Sale of subsidiary net of Citagenix cash sold *[note 4]* | **559** | - |
| Purchase of equipment | **(11)** | (8) |
| **Cash flows used in investing activities** | **(11,278)** | (244) |
| **FINANCING ACTIVITIES** | | |
| Lease payments | **(78)** | (113) |
| Increase in loan receivable | **(1)** | (2) |
| Proceeds from warrants | **-** | 128 |
| **Cash flows provided by (used in) financing activities** | **(79)** | 13 |
| **Net decrease in cash during the period** | **(24,278)** | (13,382) |
| Cash beginning of the period | **34,807** | 71,973 |
| **Cash end of the period** | **10,529** | 58,591 |

## 1. DESCRIPTION OF BUSINESS

Antibe Therapeutics Inc. (the "Company" or "Antibe") was incorporated under the *Business Corporations Act* (Ontario) on May 5, 2009. The Company's common shares (the "Common Shares") trade on the Toronto Stock Exchange ("TSX") under the symbol "ATE", and on the OTCQX market under the symbol "ATBPF."

The Company originates, develops and out-licenses new pharmaceuticals. Antibe's lead compound, otenaproxesul (previously known as ATB-346), combines a moiety that releases hydrogen sulfide with naproxen, an approved, marketed and off-patent, non-steroidal, anti-inflammatory drug. The Company's main objectives are to develop otenaproxesul by satisfying the requirements of the relevant drug regulatory authorities while also satisfying the commercial licensing objectives of prospective global partners. The Company has also established a development plan for its lead compound through to the end of Phase III human clinical studies for regulatory discussion purposes. Additionally, the Company continues to investigate other research projects as well as additional development opportunities.

The Company was also, through its wholly owned subsidiary, Citagenix Inc. ("Citagenix"), a seller of tissue regenerative products servicing the orthopaedic and dental marketplaces. Citagenix's portfolio consists of branded biologics and medical devices that promote bone regeneration. Citagenix operates in Canada through its direct sales force, and in the United States and internationally via a network of distributors. On November 1, 2022, the Company completed the sale of Citagenix to HANSAmed Limited (see note 4).

The address of the Company's registered head office and principal place of business is 15 Prince Arthur Avenue, Toronto, Ontario, Canada, M5R 1B2.

The Company was founded with an exclusive intellectual property license from Antibe Holdings Inc. ("Holdings"), a related party, to develop and commercialize the Company's pipeline drugs. The license obligated the Company to pay royalties to Holdings on future revenues derived from this intellectual property. On May 7, 2021, the Board of Directors of Antibe and Holdings agreed to combine the companies in an amalgamation transaction. Under the terms of the agreement, the Company acquired full ownership of Holdings' patent portfolio, eliminating the royalty liability on future revenues (note 3). As of the date of the amalgamation on June 3, 2021, 11.4% of the Company's Common Shares were held by the former shareholders of Holdings.

These unaudited condensed interim consolidated financial statements were authorized for issuance by the Board of Directors on February 14, 2023.

## 2. BASIS OF PRESENTATION

**(a) Statement of compliance** –

These unaudited condensed interim consolidated financial statements were prepared using the same accounting policies and methods as those used in the Company's audited consolidated financial statements for the year ended March 31, 2022. These unaudited condensed interim consolidated financial statements have been prepared in accordance with International Accounting Standard 34 ("IAS 34"), *Interim Financial Reporting*. Accordingly, these unaudited condensed interim consolidated financial statements do not include all the disclosures required for annual financial statements and should be read in conjunction with the annual consolidated financial statements of the Company for the year ended March 31, 2022, which are available on SEDAR. Several amendments apply for the first time in 2022, but do not have an impact on the unaudited condensed interim consolidated financial statements of the Company. The Company has not early adopted any other standard, interpretation or amendment that has been issued but is not yet effective.

**(b) Consolidation –**

These unaudited condensed interim consolidated financial statements reflect the accounts of the Company and its previously wholly owned subsidiary, Citagenix.

## 2. BASIS OF PRESENTATION *(continued)*

Prior to November 1, 2022, the Company operated as two operating segments: Antibe (research and development of new pharmaceuticals) and Citagenix (a seller of tissue regenerative products servicing the orthopaedic and dental marketplaces). On November 1, 2022, the Company closed the sale of Citagenix.

The results of the operations of Citagenix to November 1, 2022 are recorded within income from discontinued operations in the interim consolidated statements of loss and comprehensive loss (note 4).

All intercompany balances and transactions have been eliminated on consolidation.

**(c) Going concern –**

The unaudited condensed interim consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As at December 31, 2022, the Company incurred a net loss from continuing operations for the nine months ended December 31, 2022 of $16,055, had negative cash flows from operations of $12,921 and an accumulated deficit of $126,943.

Until such time as the Company's pharmaceutical products are patented and approved for sale, the Company's liquidity requirements are dependent on its ability to raise additional capital by selling additional equity, from licensing agreements of its lead compound, from proceeds from the exercise of stock options and common share purchase warrants or by obtaining credit facilities. The Company's future capital requirements will depend on many factors, including, but not limited to, the market acceptance of its products and services. No assurance can be given that any such additional funding will be available or that, if available, it can be obtained on terms favourable to the Company.

All of the factors above indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern, which assumes the Company will continue its operations for the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the ordinary course of business. Management's plans to address these issues involve actively seeking capital investment and generating revenue and profit from the commercialization of its products. The Company's ability to continue as a going concern is subject to management's ability to successfully implement this plan. Failure to implement this plan could have a material adverse effect on the Company's financial condition and financial performance.

If the going concern assumption were not appropriate for these unaudited condensed interim consolidated financial statements, then adjustments would be necessary to the carrying value of assets and liabilities, the reported revenue and expenses, and the classifications used in the interim consolidated statements of financial position. The unaudited condensed interim consolidated financial statements do not include adjustments that would be necessary if the going concern assumption were not appropriate.

**(d) Business uncertainty –**

COVID-19 could further impact the Company's expected timelines, operations and the operations of its third-party suppliers, manufacturers, and Contract Research Organizations as a result of quarantines, facility closures, travel and logistics restrictions and other limitations in connection with the outbreak. The most significant risk posed by the COVID-19 pandemic is that it could also significantly impact the progress and completion of the clinical trials.

Whatever further impact, if any, the COVID-19 pandemic may have on the Company is unpredictable. The continued spread of COVID-19 nationally and globally could also lead to a deterioration of general economic conditions including a possible national or global recession. While the Company believes the current conditions related to the COVID-19 pandemic to be improving, the situation is dynamic and the impact of COVID-19 on its future results of operations and financial condition cannot be reasonably estimated at this time. The Company continues to evaluate the situation and monitor any impacts or potential impacts to its business.

## 2. BASIS OF PRESENTATION *(continued)*

**(e) Use of estimates –**

The preparation of these unaudited condensed interim consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, if any, as at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. Actual results may vary from the current estimates. These estimates are reviewed periodically and, as adjustments become necessary, they are reported in income in the year in which such adjustments become known. Significant estimates in these unaudited condensed interim consolidated financial statements include the impairment of intangible assets not yet subject to amortization, the completeness of the accrual for research and clinical trial expenses, and inputs related to the calculation of stock-based compensation expense.

## 3. AMALGAMATION WITH RELATED PARTY

On May 7, 2021, the Company announced that the Boards of Directors of Antibe and Holdings agreed to combine the companies in an amalgamation transaction pursuant to which shareholders of Holdings would receive Common Shares of the Company in exchange for their shares of Holdings. The companies were combined in a three-cornered amalgamation transaction pursuant to which Holdings amalgamated with a newly incorporated subsidiary of the Company. This related party transaction closed on June 3, 2021.

On June 3, 2021, the Company issued an aggregate of 5,873,092 Common Shares for a total consideration of $25,980, to acquire all of the issued and outstanding shares of Holdings, following which Holdings ceased to exist. The amalgamation was accounted for as an acquisition of the underlying assets of Holdings.

The fair value of the assets acquired included $26,051 in intangible assets related to intellectual property, $65 in cash, net of amounts owed to Antibe for advances made in the quarter prior to the amalgamation, $28 in other assets, $130 in income taxes payable and $34 in other current liabilities. The fair value of the intellectual property was determined based on the relief from royalty method. The Company also capitalized $301 of costs directly related to the amalgamation of the intellectual property acquired. The intellectual property acquired is not yet subject to amortization as it is classified as not yet available for use in accordance with the Company's accounting policies.

At the time of acquisition, these new shares accounted for approximately 11.4% of the ownership of Antibe on a post-transaction basis. Shares issued to Company insiders, who collectively owned approximately 37.5% of the outstanding shares of Holdings, were subject to lock-up agreements, with half of them released 120 days after closing and the balance released 240 days after closing.

## 4. DISCONTINUED OPERATIONS

On May 2, 2022, the Company announced the signing of a binding agreement to sell its Citagenix subsidiary. The $6,500 transaction involves a guaranteed $3,500 divided into four equal payments over three years, the first of which will be received upon closing. The remaining $3,000 is subject to Citagenix achieving sales milestones over the three-year period following closing. The transaction closed on November 1, 2022. In accordance with the agreement, the Company received proceeds totaling approximately $1,395 offset by transaction costs, comprising the first of the four guaranteed payments of $875 and an adjustment of approximately $520 in estimated excess working capital. Under the terms of the agreement, the $250 deposit from the purchaser previously held in escrow was released at closing and included in the $875 payment. Subsequent to quarter end, the agreement was amended to include an additional $1,000 of contingent consideration and a one year extension, bringing the total consideration to $7,500. The fair value of the guaranteed payments as of November 1, 2022 was determined to be approximately $2,255 using a discount rate of 10%.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 4. DISCONTINUED OPERATIONS *(continued)*

The results of Citagenix to November 1, 2022 are presented in the interim consolidated statements of loss and comprehensive loss as income from discontinued operations for the three and nine months ended December 31, 2022 and 2021. The Company has also derecognized the related assets and liabilities with the resulting gain recognized within income (loss) from discontinued operations.

The results of Citagenix for three and nine months ended December 31, 2022 and 2021 are presented below:

| | **Three months ended December 31, 2022** | Three months ended December 31, 2021 | **Nine months ended December 31, 2022** | Nine months ended December 31, 2021 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Revenue | **965** | 4,064 | **6,987** | 9,546 |
| Cost of goods sold | **379** | 2,337 | **3,945** | 5,553 |
| Gross profit | **586** | 1,727 | **3,042** | 3,993 |
| Expenses | **599** | 1,357 | **2,556** | 3,850 |
| Loss on sale of CGX | **98** | - | **98** | - |
| Income (loss) before tax from discontinued operations | **(111)** | 370 | **388** | 143 |
| Provision for income taxes | **-** | - | **260** | - |
| **Income (loss) from discontinued operations** | **(111)** | 370 | **128** | 143 |

The major classes of assets on the day of sale and as at March 31, 2022 are presented below:

| | **November 1, 2022** | March 31, 2022 |
|---|---|---|
| | $ | $ |
| Cash | **836** | - |
| Accounts receivable, net of allowances | **1,054** | 1,176 |
| Inventory | **2,495** | 2,259 |
| Prepaid expenses | **53** | 64 |
| Intangible assets | **804** | 804 |
| Property and equipment | **317** | 305 |
| Deposits | **7** | 24 |
| **Assets held for sale** | **5,566** | 4,632 |

The major classes of liabilities on the day of sale and as at March 31, 2022 are presented below:

| | **November 1, 2022** | March 31, 2022 |
|---|---|---|
| | $ | $ |
| Accounts payable and accrued liabilities | **1,525** | 1,753 |
| Deferred income tax | **260** | - |
| Lease liability | **51** | 125 |
| **Liabilities associated with assets held for sale** | **1,836** | 1,878 |

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 4. DISCONTINUED OPERATIONS *(continued)*

Cash flow provided by Citagenix operating activities for the seven months to November 1, 2022 was $175 (for the nine months ended December 31, 2021– $315).

## 5. TERM DEPOSITS

As at December 31, 2022, the Company held investments of $31,826 in five separate Canadian currency GICs having terms of six, nine and twelve months, and one USD currency GIC having a term of nine months. Interest rates range from 2.35% to 5.25%.

## 6. TRADE AND OTHER RECEIVABLES

| | **December 31, 2022** | March 31, 2022 |
|---|---|---|
| | $ | $ |
| Scientific Research and Experimental Development ("SR&ED") tax credits receivable | **46** | 774 |
| Deferred consideration receivable | **875** | - |
| Interest receivable | **396** | 3 |
| Harmonized Sales Tax receivable | **236** | 344 |
| | **1,553** | 1,121 |
| Employee advances *[note 7]* | **38** | 36 |
| | **1,591** | 1,157 |

## 7. RELATED PARTY TRANSACTIONS

On December 3, 2020, the Company completed the sale of 100% of the shares of its wholly owned subsidiary, BMT Medizintechnik GmbH, for cash consideration of €1 (one euro). Antibe has provided a loan to the purchaser in the amount of $157 (€100 thousand) for working capital purposes. The maturity date for the loan has been extended to December 3, 2024, and bears interest at an annual rate of 5%, payable quarterly.

Refer to note 3 for information regarding the amalgamation with Antibe Holdings Inc.

Employee cash advances as at December 31, 2022, totalled $38 (March 31, 2022 - $36). Currently, the Company has one officer receiving cash advances.

## 8. SHARE CAPITAL

**(a) Stock options –**

On November 15, 2022, the Company granted options of 222,500 common shares with an exercise price of $0.48 per share to its directors, officers, employees, and certain consultants. The total fair value of these options, calculated using the BSM, is $105. All options are subject to a service condition: one third (1/3) of the options granted will vest on each of the first, second and third anniversaries of the grant date.

On November 15, 2022, the Company also granted 117,500 performance options to key senior executives. Vesting of these options is subject to the successful achievement of certain goals that are designed to reflect the successful execution of the Company's business plan and strategy. The estimated fair value of these performance options, calculated using the BSM, is $56. As at December 31, 2022, it was determined that the probability and timing of achieving the performance criteria was greater than 50%, and as such, $3 was expensed during the period and included in contributed surplus.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 8. SHARE CAPITAL *(continued)*

For the nine months ended December 31, 2022, $16 has been included within stock-based compensation in the interim consolidated statements of loss and comprehensive loss.

The following is a summary of all options to purchase Common Shares that are outstanding as at December 31, 2022 and 2021, as well as details on exercise prices and expiry dates:

| | **Nine months ended December 31, 2022** | | Nine months ended December 31, 2021 | |
|---|---|---|---|---|
| | **Options** | **Weighted average price** | Options | Weighted average price |
| | | $ | | $ |
| **Balance, beginning of the period** | **1,274,435** | **2.93** | 1,269,035 | 2.95 |
| Granted during the period | **340,000** | **0.48** | 20,000 | 0.91 |
| Forfeited during the period | **(57,412)** | **3.34** | (2,100) | 1.92 |
| **Balance, end of the period** | **1,557,023** | **1.73** | 1,286,935 | 2.92 |

| **Number of options** | **Exercise price** | **Expiry date** |
|---|---|---|
| | $ | |
| 15,000 | 5.50 | October 21, 2023 |
| 66,000 | 0.68 | January 11, 2024 |
| 80,500 | 6.60 | March 4, 2024 |
| 20,000 | 0.91 | November 15, 2024 |
| 36,000 | 1.40 | July 13, 2025 |
| 1,700 | 0.68 | March 9, 2026 |
| 156,272 | 1.45 | March 9, 2026 |
| 10,000 | 0.68 | January 18, 2027 |
| 115,211 | 0.68 | March 31, 2027 |
| 687,000 | 2.00 | March 31, 2027 |
| 15,152 | 4.95 | April 11, 2028 |
| 4,188 | 4.00 | May 8, 2028 |
| 10,000 | 2.90 | March 11, 2029 |
| 340,000 | 0.48 | November 15, 2032 |
| 1,557,023 | | |

The number of options exercisable as at December 31, 2022, is 1,217,023 and the weighted average exercise price of these options is $2.08.

The total fair value of options not yet recognized as an expense is $150.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 8. SHARE CAPITAL *(continued)*

The following assumptions were used in the BSM to determine the fair value of stock options granted in the period:

| | **Nine months ended December 31, 2022** | Nine months ended December 31, 2021 |
|---|---|---|
| Weighted average risk-free interest rate | **3.13%** | 1.13% |
| Weighted average expected volatility | **122%** | 98% |
| Expected dividend yield | **-** | - |
| Weighted average expected life of options | **10 years** | 3 years |
| Weighted average share price | **$0.50** | $0.88 |
| Weighted average exercise price | **$0.48** | $0.91 |

**(b) Restricted share unit plan –**

The following is a summary of all RSUs for Common Shares that are outstanding as at December 31, 2022 and 2021:

| | **Nine months ended December 31, 2022** | Nine months ended December 31, 2021 |
|---|---|---|
| | **RSUs** | RSUs |
| **Balance, beginning of the period** | **2,438,445** | 3,625,574 |
| Granted during the period | **-** | 435,779 |
| Redeemed during the period | **(369,533)** | (234,324) |
| Forfeited during the period | **(5,083)** | (6,500) |
| **Balance, end of the period** | **2,063,829** | 3,820,529 |

Based on the share price on the date of granting, the total fair value of RSUs not yet recognized as an expense is $1,719. During the quarter the Company also deemed the RSUs granted to Citagenix employees to be vested. This resulted in an acceleration of the related stock-based compensation expense of $130.

For the three and nine months ended December 31, 2022, $798 and $2,341, respectively, have been included within stock-based compensation in the interim consolidated statements of loss and comprehensive loss.

**(c) Common share purchase warrants –**

On June 15, 2022, the Company announced that it is extending the expiry date (the "Warrant Extension") and amending the exercise price (the "Amended Exercise Price") of 3,117,957 Common Share purchase warrants ("Warrants") of the Company.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 8. SHARE CAPITAL *(continued)*

The Warrants, pursuant to the Warrant Extension, will expire on December 31, 2023 and, pursuant to the Amended Exercise Price, be exercisable into a Common Share of the Company at $1.80 per Common Share, as depicted in the table below:

| Issue Date | Number of Warrants | Issued Exercise Price | Amended Exercise Price | Original Expiry Date | Amended Expiry Date | Effective Date |
|---|---|---|---|---|---|---|
| June 30, 2020 | 2,373,401 | $6.00 | $1.80 | June 30, 2022 | December 31, 2023 | June 30, 2022 |
| August 13, 2019 | 748,555 | $4.00 | $1.80 | August 13, 2022 | December 31, 2023 | June 30, 2022 |

None of the Warrants are held by insiders of the Company.

The Toronto Stock Exchange has approved the Warrant Extension and Amended Exercise Price with an effective date for the amendments of June 30, 2022. These amendments had no impact to the presentation of shareholders' equity since the Company's accounting policy is to not record an adjustment to shareholders' equity when the warrants continue to be classified as equity under IAS 32.

The following is a summary of all warrants to purchase Common Shares that are outstanding as at December 31, 2022 and 2021, as well as details on exercise prices and expiry dates:

| | **Nine months ended December 31, 2022** | | Nine months ended December 31, 2021 | |
|---|---|---|---|---|
| | **Warrants** | **Weighted average price** | Warrants | Weighted average price |
| | | $ | | $ |
| **Balance, beginning of the period** | **7,389,166** | **6.31** | 7,906,117 | 6.12 |
| Exercised during the period | **-** | **-** | (42,640) | 3.00 |
| Expired during the period | **(499,810)** | **3.96** | (29,386) | 3.00 |
| **Balance, end of the period** | **6,889,356** | **4.83** | 7,834,091 | 6.15 |

The weighted average price for the nine months ended December 31, 2022 includes the above-mentioned amended exercise price of warrants granted June 30, 2020 and August 13, 2019.

| Number of warrants | Exercise price | Expiry date |
|---|---|---|
| | $ | |
| 403,650 | 6.00 | February 24, 2023 |
| 3,121,956 | 1.80 | December 31, 2023 |
| 3,363,750 | 7.50 | February 24, 2024 |
| 6,889,356 | | |

## 9. LOSS PER SHARE

Basic loss per share is calculated by dividing the net loss attributable to common shareholders by the weighted average number of Common Shares outstanding during the period. All unexercised share options and warrants were excluded from calculating diluted loss per share as the effect of their issuance would be anti-dilutive.

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 10. RESEARCH AND DEVELOPMENT EXPENSES

The nature of the research and development expenses for the three and nine months ended December 31, 2022 and 2021, is summarized as follows:

| | **Three months ended December 31, 2022** | Three months ended December 31, 2021 | **Nine months ended December 31, 2022** | Nine months ended December 31, 2021 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Salaries and wages | **354** | 480 | **1,552** | 1,925 |
| Professional and consulting fees | **275** | 74 | **1,213** | 325 |
| Research and clinical trial costs | **1,594** | 1,925 | **7,144** | 8,784 |
| SR&ED rebate | **8** | - | **8** | (86) |
| **Total research and development expenses** | **2,231** | 2,479 | **9,917** | 10,948 |

Non-refundable advance payments for goods and services that will be used or rendered in future research and development activities are recorded as a prepaid expense and recognized as an expense within "Research and clinical trial costs" in the period that the related goods are consumed or services are performed. As at December 31, 2022, $274 (March 31, 2022 – $569) was recorded as a prepaid expense.

## 11. GENERAL AND ADMINISTRATIVE EXPENSES

The nature of the general and administrative expenses for the three and nine months ended December 31, 2022 and 2021, is summarized as follows:

| | **Three months ended December 31, 2022** | Three months ended December 31, 2021 | **Nine months ended December 31, 2022** | Nine months ended December 31, 2021 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Salaries and wages | **385** | 312 | **1,450** | 1,432 |
| Professional and consulting fees | **1,036** | 798 | **2,515** | 2,240 |
| Office expenses | **89** | 135 | **251** | 346 |
| Other expenses | **45** | 40 | **199** | 255 |
| **Total general and administrative expenses** | **1,555** | 1,285 | **4,415** | 4,273 |

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 12. STOCK-BASED COMPENSATION

The function of the stock-based compensation expense for the three and nine months ended December 31, 2022 and 2021, is summarized as follows:

| | **Three months ended December 31, 2022** | Three months ended December 31, 2021 | **Nine months ended December 31, 2022** | Nine months ended December 31, 2021 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| General and administrative | **543** | 938 | **1,526** | 3,090 |
| Research and development | **266** | 492 | **831** | 1,583 |
| **Total stock-based compensation** | **809** | 1,430 | **2,357** | 4,673 |

## 13. SELLING AND MARKETING EXPENSES

The nature of the selling and marketing expenses for the three and nine months ended December 31, 2022 and 2021, is summarized as follows:

| | **Three months ended December 31, 2022** | Three months ended December 31, 2021 | **Nine months ended December 31, 2022** | Nine months ended December 31, 2021 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Advertising and promotion | **5** | 1 | **68** | 121 |
| Travel and entertainment | **62** | 39 | **207** | 60 |
| **Total selling and marketing expenses** | **67** | 40 | **275** | 181 |

## 14. FINANCE AND RELATED COSTS (INCOME)

The components of the finance and related costs (income) for the three and nine months ended December 31, 2022 and 2021, are as follows:

| | **Three months ended December 31, 2022** | Three months ended December 31, 2021 | **Nine months ended December 31, 2022** | Nine months ended December 31, 2021 |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Interest and bank charges | **2** | 2 | **6** | 6 |
| Foreign currency transactions | **-** | 15 | **83** | (1) |
| **Total finance and related costs** | **2** | 17 | **89** | 5 |

(Expressed in thousands of Canadian dollars, except share and per share amounts and where noted)

## 15. CAPITAL RISK MANAGEMENT

The Company's primary objective with respect to its capital management is to ensure that it has sufficient cash resources to fund the research, development and patent of drugs. To secure the additional capital necessary to pursue these plans, the Company may attempt to raise additional funds through the issuance of equity.

The Company includes the following in its definition of capital: share capital, common share purchase warrants, contributed surplus and accumulated deficit, which, for the nine months ended December 31, 2022, totalled $43,263 (March 31, 2022 – $56,833). The Company is not subject to externally imposed capital requirements.

## 16. FINANCIAL RISK MANAGEMENT

The Company is exposed to a variety of financial risks by virtue of its activities: credit risk, liquidity risk, foreign currency risk and interest rate risk. The overall risk management program focuses on the unpredictability of financial markets and seeks to minimize potential adverse effects on financial performance.

Risk management is carried out by the officers of the Company as discussed with the Board of Directors. The officers of the Company are charged with the responsibility of establishing controls and procedures to ensure that financial risks are mitigated in accordance with the expectation of the Board of Directors as follows:

### Credit risk

The Company's credit risk is primarily attributable to other receivables and the excess of cash held in one financial institution over the deposit insurance limit set by the Canadian Deposit Insurance Corporation.

### Liquidity risk

Liquidity risk is the risk that the Company is not able to meet its financial obligations as they become due or can do so only at excessive cost. The Company manages its liquidity risk by forecasting cash flows and anticipated investing and financing activities. Officers of the Company are actively involved in the review and approval of planned expenditures, including actively seeking capital investment and generating revenue and profit from the commercialization of its products (note 2(c)).

As at December 31, 2022, the Company's financial obligations, including applicable interest, are due as follows:

| | Less than 1 year | 1–2 years | After 2 years | Total |
|---|---|---|---|---|
| | $ | $ | $ | $ |
| Accounts payable and accrued liabilities | 2,835 | - | - | 2,835 |

### Foreign currency risk

The functional and reporting currency of the Company is the Canadian dollar. The Company undertakes transactions denominated in foreign currencies, including US dollars and euros, and, as such, is exposed to currency risk due to fluctuations in foreign exchange rates against the Canadian dollar. The Company does not use derivative instruments to reduce exposure to foreign currency risk.

### Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The Company is not currently incurring any debt and is therefore not exposed to changes in interest rates.

## 17. DEFERRED REVENUE

On February 24, 2017, Antibe entered into an exclusive long-term license and distribution agreement ("License Agreement 1") with Laboratoires Acbel SA ("Acbel") for otenaproxesul in Albania, Algeria, Bulgaria, Greece, Jordan, Romania and Serbia (the "Territory"). Acbel is an affiliated holding company of Galenica SA in Greece. Under the terms of License Agreement 1, Antibe was issued an upfront payment of €800 (CAD$1,142) and is entitled to receive a 5% royalty on net sales of otenaproxesul in the Territory. The upfront revenue is reflected in deferred revenue until the point that Acbel can benefit from the license.

On September 4, 2018, Antibe entered into an exclusive licensing agreement ("License Agreement 2") with Kwangdong Pharmaceutical Co., Ltd ("Kwangdong") for the development and commercialization of otenaproxesul in the Republic of Korea ("Region"). Under the terms of License Agreement 2, Antibe was issued an upfront payment of US$1,000 (CAD$1,316), which is reflected in deferred revenue until the point that Kwangdong can benefit from the license. Under the terms of License Agreement 2, Antibe will be entitled to receive US$9 million in milestone payments. Fees paid to an agent used in obtaining License Agreement 2 have been recorded as deferred contract costs on the interim consolidated statements of financial position in the amount of $236 as at December 31, 2022 (March 31, 2022 - $236).

On February 9, 2021, Antibe entered into an exclusive licensing agreement ("License Agreement 3") with Nuance Pharma ("Nuance") for the development and commercialization of otenaproxesul in the Greater China region. The license provides Nuance with exclusive rights to commercialize otenaproxesul in China, Hong Kong, Macau, and Taiwan (the "Sector"). Under the terms of the agreement, Antibe was issued an upfront payment of US$20 million (CAD$25,231), which is reflected in deferred revenue until the point at which Nuance can benefit from the license. Additionally, Antibe will receive a double-digit royalty on net sales in the Sector and is entitled to receive US$80 million in development and sales milestones. Fees paid to an agent used in obtaining License Agreement 3 have been recorded as deferred contract costs on the interim consolidated statements of financial position in the amount of $1,047 as at December 31, 2022 (March 31, 2022 - $1,047).

The amount of the upfront payments for all licenses is included on the consolidated statements of financial position as deferred revenue and will be recorded through the consolidated statements of loss and comprehensive loss at the same point when the license revenue is recognized.

## 18. COMMITMENTS AND CONTINGENCIES

**Royalty agreement –**

On November 16, 2015, the Company announced the signing of an exclusive long-term license and distribution agreement with Knight Therapeutics Inc. ("Knight"), a leading Canadian specialty pharmaceutical company, for the Company's anti-inflammatory and pain drugs, otenaproxesul, ATB-352 and ATB-340, as well as the rights to other, future prescription drugs. Under the terms of the license agreement, the Company has granted Knight the exclusive commercial rights for the Company's drug candidates and other future prescription drugs in Canada, Israel, Russia and sub-Saharan Africa. The Company is entitled to royalties on annual sales, along with the potential for $10 million in payments for sales-based milestones.

The Company received no royalties from Knight in the nine months ended December 31, 2022.

In the normal course of business, the Company could be the subject of litigation or other potential claims. While management assesses the merits of each lawsuit and defends itself accordingly, the Company may be required to incur significant expenses or devote significant resources to defending itself against litigation.

This is **Exhibit "E"**
Referred to in the Affidavit of Scott Curtis
Affirmed remotely before me this 8th day of April, 2024

Dillon Gohil

A Commissioner for Taking Affidavits (or as may be)

**Court File No. _____**

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ANTIBE THERAPEUTICS INC. (the "**Applicant**")

**CONSENT**

**DELOITTE RESTRUCTURING INC.** is a licensed trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*.

**DELOITTE RESTRUCTURING INC.** is not subject to any of the restrictions on who may be appointed monitor as set out in section 11.7(2) of the *Companies' Creditors Arrangement Act*.

**DELOITTE RESTRUCTURING INC.** HEREBY CONSENTS to act as Monitor in the above-captioned proceedings.

Dated at Toronto this 8th day of April, 2024

**DELOITTE RESTRUCTURING INC.**

**Per:** _____

**Nigel D. Meakin**

**Senior Vice President**

This is **Exhibit "F"**
Referred to in the Affidavit of Scott Curtis
Affirmed remotely before me this 8th day of April, 2024

Dillon Gohil

A Commissioner for Taking Affidavits (or as may be)

March 17, 2024

Antibe Therapeutics Inc.
15 Prince Arthur Ave.
Toronto ON
M5R 1B2

Attention: Mr. Dan Legault
Chief Executive Officer

Dear Sirs/Mesdames:

Re: Engagement of Black Swan Advisors Inc., for Edward A. Sellers to Serve as Restructuring Advisor to Antibe Therapeutics Inc.

---

Antibe Therapeutics Inc. ("Company") wishes to retain Black Swan Advisors Inc. ("Black Swan") to provide the services of Edward A. Sellers ("Sellers"), Black Swan's President & Managing Director, as Restructuring Advisor to the Company.

This letter will confirm the appointment of Sellers as Restructuring Advisor to the Company and set out the terms of the appointment.

**1. Services**

Black Swan's services will be provided by Sellers and will encompass the scope of appointment set out in Schedule A ("Advisory Services").

The Board of Directors ("Board") and the Chief Executive Officer ("CEO") of the Company shall cause employees and representatives of the Company and its agents and advisors to co-operate with and assist Sellers in acting as Restructuring Advisor and in performing the Advisory Services.

Black Swan shall cause Sellers to conduct himself as Restructuring Advisor in the manner reasonably expected of a senior advisor to the Company and to comply in all material respects with policies and codes of conduct of the Company applicable to the Restructuring Advisor including, without limitation, policies relating to trading in securities and confidentiality of information, copies of which or access to will be provided to Black Swan and Sellers.

**2. Reporting and Legal Relationship**

Black Swan and Sellers have been retained and will provide the Advisory Services to the Company, including the Board and the CEO, as independent contractors and will have no legal authority to bind the Company to any obligation.

In acting as Restructuring Advisor, Sellers will report exclusively to and receive instructions from the Board and the CEO. The Board and the CEO will designate members

of the Company's senior management team from time-to-time that Black Swan and Sellers may liaise with in providing the Advisory Services.

**3. Term of Appointment**

Subject to the provisions below regarding a) ongoing payment, performance and indemnification obligations continuing after the termination of this engagement ("Termination Obligations") and b) the terms of any applicable court order in any Restructuring Proceedings (as defined below), the appointment of Sellers as Restructuring Advisor may be terminated by either the Company or Black Swan on notice with immediate effect.

Black Swan and Sellers acknowledge that their retention is not an acknowledgment or indication that the Company has determined to commence proceedings in connection with any postponement, moratorium, compromise or reduction of payment or performance of any obligation, or to arrange, re-organize or restructure any of its capital, obligations, operations, or business affairs ("Restructuring Proceedings").

If circumstances change and the Company determines that commencing Restructuring Proceedings is advisable or required, the Company intends that Black Swan continue to assist in any such Restructuring Proceedings and acknowledges that Sellers may be appointed as Chief Restructuring Officer ("CRO") by court order, or in some similar role, in such Restructuring Proceedings. In such event, Sellers' engagement as Restructuring Advisor hereunder could be confirmed, augmented, amended, or superseded, by the terms of any court order issued in the Restructuring Proceedings.

**4. Acknowledgement**

Black Swan shall cause Sellers to devote such time and attention as circumstances require to serve as Restructuring Advisor. In that regard, Black Swan has agreed to cause Sellers to be present physically in Toronto as necessary, and as permitted in compliance with orders of public health authorities and prudential personal safety standards, to better serve as Restructuring Advisor.

The Company acknowledges that Black Swan and Sellers have and will have other commitments and business activities which they will continue to be involved in, provided that such activities do not interfere with the effective performance of the Advisory Services hereunder.

**5. Information**

The Company will use commercially reasonable efforts to ensure that all information to be provided directly by it or indirectly on their instruction, orally or in writing, to Black Swan or Sellers in connection with Sellers' engagement hereunder and Sellers' service as Restructuring Advisor ("Information") will be accurate and complete in all material respects.

Although the Company will make commercially reasonable efforts to ensure the accuracy, completeness and reliability of the Information provided to Black Swan and Sellers in

connection with providing the Advisory Services, the Company makes no representations or warranties, express or implied, as to the quality, accuracy, reliability or completeness of the Information, and Black Swan and Sellers expressly acknowledge the inherent risk of error in the use of the Information.

The Company acknowledges that there will typically be a direct correlation between the content, aptness and quality of the Advisory Services, and the quality, accuracy, reliability, and completeness of the Information provided to Black Swan and Sellers.

**6. Fees, Expenses and Taxes**

Black Swan shall be paid by the Company the following compensation for providing Sellers' services referred to above. Until notified to the contrary, all payments to be made and transferred to the Canadian dollar account specified in Schedule B hereto, which Schedule B forms part of this agreement.

**Hourly Fee and Retainer:** Black Swan will be paid for Sellers providing the Advisory Services based on an hour x rate formula using an hourly rate of C$1,500 ("Hourly Fee"). Time will be booked in increments of no less than a quarter hour. Accounts will be issued weekly and payable on issue.

The Company will provide Black Swan with a retainer of C$50,000 (the "Retainer") to be held and applied by Black Swan on account of: a) the amount of any outstanding fees and expenses remaining unpaid on termination of this engagement; and/or b) the Minimum Fee.

**Minimum Fee:** Should Black Swan's and Sellers' services hereunder be terminated for any reason (other than in connection with Black Swan's or Sellers' resignation, failure to provide the Advisory Services hereunder, gross negligence or wilful misconduct,), the Company will pay to Black Swan a lump sum payment of C$200,000 less the amount of any Hourly Fees previously paid to Black Swan prior to such termination.

**Expenses:** In addition to the foregoing compensation, the Company shall reimburse Black Swan and Sellers for their commercially reasonable out-of-pocket expenses in performing this agreement, including, but not limited to, travel, accommodation, communication and courier charges, and any taxes paid or payable thereon.

Such expenses may include (i) business class travel for any flight greater than three hours or outside of North America. Reimbursable expenses will be payable on presentation of invoices or payment records by Black Swan.

**Taxes:** All or part of the foregoing may be subject to federal Harmonized Services Tax and/or applicable provincial sales taxes, and/or equivalent value added, federal or state taxes in any other jurisdiction. Where such taxes are applicable, an additional amount equal to the amount of taxes payable thereon will be charged to and payable by the Company at the same time as the amounts to which such taxes apply.

**7. Limitation on Liability and Indemnification**

Any and all claims which the Company may make against Black Swan and Sellers in connection with the provision of the Advisory Services shall be limited in recovery for proven damages to the extent of any fees paid to Black Swan under the terms of this retainer ("Fee Recovery Limit"). The Company hereby agrees to indemnify Black Swan and Sellers in respect of any and all claims in excess of the Fee Recovery Limit.

**8. Survival of Terms and Termination**

This engagement shall take effect as of March 6, 2024 and shall terminate when Sellers ceases to be Restructuring Advisor to the Company, provided that: (a) the obligations of the Company (i) to indemnify Black Swan and Sellers, and (ii) to pay any amounts to Black Swan pursuant to this agreement including fees, expenses and taxes shall survive the termination or expiry of Black Swan's and Sellers' engagement hereunder.

**9. Other Matters**

This agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario.

If any provision hereof shall be determined to be invalid or unenforceable in any respect, such determination shall not affect such provision in any other respect or any other provision hereof.

Headings used herein are for convenience of reference only and shall not affect the interpretation or construction of this agreement.

This Agreement may be executed by the parties hereto in counterparts electronically or physically, each of which counterparts shall be deemed an original, but both such counterparts shall together constitute one and the same document.

**10. Notices**

All notices and other communications given under this letter shall be in writing and delivered by email or by personal delivery, if to the Company at:

Antibe Therapeutics Inc.
15 Prince Arthur Ave.
Toronto ON
M5R 1B2

Attention: Dan Legault

Email: dan@antibethera.com

and if to Black Swan at its address at:

89 Little Morgan Bay Rd,
Rosseau ON
Canada
P0C 1J0

Email: esellers@blackswanadvisors.ca

or as each party may specify in a written notice to the other party. All such notices and communications shall be effective when delivered.

**11. Acceptance**

Please confirm that the foregoing is in accordance with your understanding by signing and returning the attached duplicate copy of this letter which shall thereupon constitute a binding agreement between the parties.

Yours truly,

**Black Swan Advisors Inc.**

By: _____
Name: Edward A. Sellers
Title: President & Managing Director

**Accepted and Agreed**, this 17th day of March 2024, with effect as of March 6, 2024.

**Antibe Therapeutics Inc.**

By: _____
Name: Dan Legault
Title: Chief Executive Officer

# SCHEDULE A

## Initial Scope of Advisory Services

- Advise the Company and assist members of senior management regarding strategic options and alternatives available to the Company to address its capital, liquidity, operations, or business affairs in view of the Company's current circumstances ("Strategic Review").
- Advise the Company and assist members of senior management with activities related to the Strategic Review, including but not limited to cash management, value preservation, stakeholder engagement and communications.
- Advise the Company and assist members of senior management in contingency planning and preparation ("Contingency Planning") in connection with any stay, postponement, moratorium, compromise or reduction of payment or performance of any obligation, or to arrange, re-organize, restructure, or otherwise address any of its capital, liquidity, operations, or business affairs ("Restructuring").
- Advise the Company and assist members of senior management in preparing to commence or defend any proceedings related to Contingency Planning or a Restructuring ("Restructuring Proceedings").
- Advise the Company and assist members of senior management regarding negotiations and processes related to the conduct of any Restructuring Proceedings, including, but not limited to the development of a plan for any Restructuring ("Restructuring Plan") and any related implementation processes, such as one or more Sales and Investor Solicitation Processes ("SISP") relating to some or all of the Company, its property and its business.
- Participate in meetings and negotiations with the Company's advisors, external stakeholders and interested parties, including but not limited to existing creditors, potential investors and financiers, their respective representatives and agents, and others related to the Strategic Review, Contingency Planning, Restructuring Proceedings, Restructuring and any other matters related to the Advisory Services.

SCHEDULE B

Black Swan Payment Instructions

Bank Name: Bank of Montreal
SWIFT Code: BOFMCAM2
ROUTING NO. CC000137442
Account Name: BLACK SWAN ADVISORS INC.
Account Holder Address: 89 Little Morgan Bay Rd, Rosseau, ON P0C 1J0
CAD Chequing Account Number: 1997829
Bank Number: 001
Branch Transit#: 37442
Branch Address: 55 BLOOR ST WEST, 5th FLOOR, TORONTO ON M4W3N5
Bank Contact: ASHLEIGH LAM/ 416-927-2666

Note:
All US Funds are sent to the Bank of Montreal using our correspondent bank:
WELLS FARGO N.A, NEW YORK
SWIFT CODE: PNBPUS3NNYC
ABA 026005092

This is **Exhibit "G"**
Referred to in the Affidavit of Scott Curtis
Affirmed remotely before me this 8th day of April, 2024

Dillon Gohil

A Commissioner for Taking Affidavits (or as may be)

**Antibe Therapeutics Inc.**
**Cash Flow Forecast**
**(in $000)**

| Week Ending | 12-Apr-24 | 19-Apr-24 | 26-Apr-24 | 3-May-24 | 10-May-24 | 17-May-24 | Total |
|---|---|---|---|---|---|---|---|
| **Receipts** | | | | | | | |
| Interest Income | - | - | - | - | - | - | **-** |
| HST Receipts | - | - | - | - | - | - | **-** |
| **Total Receipts** | **-** | **-** | **-** | **-** | **-** | **-** | **-** |
| **Operating Disbursements** | | | | | | | |
| Employee & Contractor Costs | - | (113.0) | (87.8) | (94.9) | (51.1) | (104.9) | **(451.7)** |
| Selling, General and Administrative Costs | (26.6) | (62.0) | (36.0) | (5.2) | (5.2) | (29.3) | **(164.3)** |
| Other Costs | (0.2) | (0.2) | (0.2) | (0.2) | (0.2) | (0.2) | **(1.2)** |
| Contingency Costs | (15.0) | (15.0) | (15.0) | (15.0) | (15.0) | (15.0) | **(90.0)** |
| **Total Operating Disbursements** | **(41.8)** | **(190.2)** | **(139.0)** | **(115.3)** | **(71.5)** | **(149.4)** | **(707.2)** |
| **Operating Cash Flow** | **(41.8)** | **(190.2)** | **(139.0)** | **(115.3)** | **(71.5)** | **(149.4)** | **(707.2)** |
| **Restructuring Costs** | | | | | | | |
| Professional Fees (incl. HST) | (181.9) | (200.6) | (186.5) | (76.3) | (48.0) | (104.5) | **(797.8)** |
| **Total Restructuring Costs** | **(181.9)** | **(200.6)** | **(186.5)** | **(76.3)** | **(48.0)** | **(104.5)** | **(797.8)** |
| **Net Cash Flow** | **(223.7)** | **(390.8)** | **(325.5)** | **(191.6)** | **(119.5)** | **(253.9)** | **(1,505.0)** |
| **Total Liquidity** | | | | | | | |
| Opening | 19,634.8 | 19,411.1 | 19,020.3 | 18,694.8 | 18,503.2 | 18,383.7 | **19,634.8** |
| Net Cash Flow | (223.7) | (390.8) | (325.5) | (191.6) | (119.5) | (253.9) | **(1,505.0)** |
| Closing | **19,411.1** | **19,020.3** | **18,694.8** | **18,503.2** | **18,383.7** | **18,129.8** | **18,129.8** |

**Notes**

[1] The purpose of the CFF is to estimate the liquidity requirements of Antibe Therapeutics Inc. ("Antibe") during the forecast period. The forecast above is presented in Canadian Dollars.

[2] Any estimates in US Dollars have been translated at an foreign exchange rate of 1.35.

[3] Forecast Employee & Contractor Costs are based on historic payroll and contractor amounts.

[4] Forecast Selling, General, and Administrative Costs include costs related to marketing, accounting, legal, investor relations, office, and public company costs. The forecast contemplates increase in regulatory costs due to liaising with the U.S. Food and Drug Administration ("FDA") regarding the clinical hold of the planned Phase II trial.

[5] Forecast Professional Fees include the Company's legal and financial advisors.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ANTIBE THERAPEUTICS INC. (the "Applicant")

Court File No.

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(Commercial List)**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF SCOTT CURTIS**

**Paliare Roland Rosenberg Rothstein LLP**
155 Wellington Street West 35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300

**Kenneth T. Rosenberg** (LSO#21102H)
Tel: 416.646.4304
Email: ken.rosenberg@paliareroland.com

**Massimo Starnino** (LSO# 41048G)
Tel: 416.646.7431
Email: Max.Starnino@paliareroland.com

**Kartiga Thavaraj** (LSO# 75291D)
Tel: 416.646.6317
Email: kartiga.thavaraj@paliareroland.com

**Evan Snyder** (LSO# 82007E)
Tel: 416.646.6320
Email: evan.snyder@paliareroland.com

Lawyers for the Applicant

Court File No.

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

| | | |
|---|---|---|
| THE HONOURABLE MR. | ) | TUESDAY, THE 9th |
| | ) | |
| JUSTICE BLACK | ) | DAY OF APRIL, 2024 |

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ANTIBE THERAPEUTICS INC. (the "**Applicant**")

**INITIAL ORDER**

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Scott Curtis affirmed April 8, 2024, and the Exhibits thereto (the "**Curtis Affidavit**"), and on being advised that there are no secured creditors who are likely to be affected by the charges created herein, and on hearing the submissions of counsel for the Applicant and counsel for Nuance Pharma Limited, and on reading the consent of Deloitte Restructuring Inc. ("**Deloitte**") to act as the Monitor and the pre-filing report of Deloitte,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and the manner of service is validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

**POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, director's compensation, employment benefits, vacation pay and expenses payable on or after the date

of this Order, whether owing to employees and independent contractors, and in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and,

(b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes

were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**RESTRUCTURING**

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

10. THIS COURT ORDERS that until and including April 18, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against

or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

11. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

12. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing,

altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

14. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

15. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

16. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of

the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of that director's or officer's gross negligence or wilful misconduct.

17. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $150,000, as security for the indemnity provided in paragraph [16] of this Order. The Directors' Charge shall have the priority set out in paragraphs [29] and [31] herein.

18. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph **[16]** of this Order.

**APPROVAL OF ENGAGEMENT OF RA**

19. THIS COURT ORDERS that:

(a) the agreement dated as of March 17, 2024, with effect as of March 6, 2024, pursuant to which the Applicant has engaged Black Swan Advisors Inc. ("**Black Swan**") to provide the services of Edward A. Sellers to act as restructuring advisor to the Applicant (the "**RA**"), a copy of which is attached as an exhibit to the Curtis Affidavit (the "**RA Engagement Letter**"), and the appointment of the RA pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby;

(b) the RA shall not be, or be deemed to be, a director or employee of the Applicant;

(c) neither Black Swan nor the RA shall, as a result of the performance of their respective obligations and services in accordance with the terms of the RA Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below);

(d) Black Swan and the RA shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of Black Swan or the RA;

(e) no action or other proceeding shall be commenced in any forum, whether directly or by way of counterclaim, third party claim or otherwise, against or in respect of Black Swan or the RA, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the RA or with leave of this Court on notice to the Applicant, the Monitor, Black Swan and the RA. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor, Black Swan and the RA at least seven (7) days prior to the return date of any such motion for leave; and (f) the obligations of the Applicant to Black Swan and the RA pursuant to the RA Engagement Letter shall be treated as unaffected and shall not be compromised in any way without the consent of the RA, whether by Plan or proposal filed under the *Bankruptcy and Insolvency Act*, R.S.C, 1985, c. B-3, as amended (the "**BIA**") in respect of the Applicant, by operation of a sale or reverse vesting order in respect of some or all of the assets or liabilities of the Applicant, or otherwise.

**APPOINTMENT OF MONITOR**

20. THIS COURT ORDERS that Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall

advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) hold and administer funds in connection with arrangements made between the Applicant, a third party, and the Monitor, or as may be required by order of the court;

(d) advise the Applicant in its preparation of the Applicant’s cash flow statements;

(e) advise the Applicant in its development of a Plan and any amendments thereto;

(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors’ or shareholders’ meetings for voting on a Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

22. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

23. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

24. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information

to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

25. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

26. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis or on such other basis as may be agreed by the Monitor, and, in addition, the Applicant is hereby authorized, going forward, to provide professional retainers in accordance with the Applicant's cash flow statement filed in support of the application for this order, to be held by such professionals as security for payment of their respective fees and disbursements outstanding from time to time.

27. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, the Applicant's counsel and the Chief Restructuring Advisor ("**RA**") shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs [29]and [31] hereof.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

29. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge; and,

Second– Directors' Charge.

30. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge and the Administration Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

31. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**" ) in favour of any Person except for any Person with a properly perfected Encumbrance on the Property who did not receive notice of this Application, provided that, for the avoidance of doubt, the Applicant remains entitled, on notice to those Persons likely to be affected thereby, to seek to subordinate any prior-ranking Encumbrances to the Charges.

32. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, and the Administration Charge, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

33. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall

not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicant pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

34. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

**SERVICE AND NOTICE**

35. THIS COURT ORDERS that the Monitor shall (i) without delay, publish, in either the National Edition or the Online version of the Globe and Mail, a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1000, and (C) prepare a list showing the names

and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

36. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL https://www.insolvencies.deloitte.ca/en-ca/Pages/antibe.aspx.

37. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, or personal delivery to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

38. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

39. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

40. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

41. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

42. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

43. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ANTIBE THERAPEUTICS INC. (the "Applicant")

***ONTARIO***
**SUPERIOR COURT OF JUSTICE-COMMERCIAL LIST**

Proceeding commenced at Toronto

**INITIAL ORDER**

**Paliare Roland Rosenberg Rothstein LLP**
155 Wellington Street West 35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300

**Kenneth T. Rosenberg** (LSO#21102H)
Tel: 416.646.4304
Email: ken.rosenberg@paliareroland.com

**Massimo Starnino** (LSO#41048G)
Tel: 416.6467431
Email: max.starnino@paliareroland.com

**Kartiga Thavaraj** (LSO# 75291D)
Tel: 416.646.6317
Email: kartiga.thavaraj@paliareroland.com

**Evan Snyder** (LSO# 82007E)
Tel: 416.646.6320
Email: evan.snyder@paliareroland.com

Lawyers for the Applicant

~~Revised: January 21, 2014~~

Court File No.

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

| | | |
|---|---|---|
| THE HONOURABLE MR. | ) | ~~,~~TUESDAY, THE 9th |
| | ) | |
| JUSTICE BLACK | ) | DAY OF ~~, 20~~APRIL, 2024 |

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ~~[APPLICANT'S NAME]~~ANTIBE THERAPEUTICS INC. (the "**Applicant**")

**INITIAL ORDER**

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME] sworn [DATE]~~Scott Curtis affirmed April 8, 2024, and the Exhibits thereto~~,~~ (the "**Curtis Affidavit**"), and on being advised that ~~the~~there are no secured creditors who are likely to be affected by the charges created herein ~~were given notice~~, and on hearing the submissions of counsel for ~~[NAMES], no one appearing~~the Applicant and counsel for ~~[NAME][1] although duly served as appears from the affidavit of service of [NAME] sworn [DATE]~~Nuance Pharma Limited, and on reading the consent of ~~[MONITOR'S NAME]~~Deloitte Restructuring Inc. ("**Deloitte**") to act as the Monitor~~,~~ and the pre-filing report of Deloitte,

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~~[1] Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and the manner of service is validated[2] so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

**POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

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[2] ~~If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.~~

~~5. [THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system[3] currently in place as described in the Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]~~

~~6.~~5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, ~~employee and pension~~director's compensation, employment benefits, vacation pay and expenses payable on or after the date of this Order, whether owing to employees and independent contractors, and in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and,

(b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

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~~[3] This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

~~7.~~6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant following the date of this Order.

~~8.~~7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to

claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

~~9.~~8. THIS COURT ORDERS that until a real property lease is disclaimed ~~[or resiliated]~~[4] in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

~~10.~~9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**RESTRUCTURING**

~~11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:~~

[4] ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, **[and to dispose of redundant or non-material assets not exceeding $● in any one transaction or $● in the aggregate]**[5]

(b) **[terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate]**; and

(c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims **[or resiliates]** the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer **[or resiliation]** of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer **[or resiliation]** is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer **[or resiliation]**, the landlord may show the affected leased premises to

[5] Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

~~prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer **[or resiliation]**, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.~~

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

~~14.~~10. THIS COURT ORDERS that until and including ~~[DATE – MAX. 30 DAYS],~~April 18, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

~~15.~~11. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

~~16.~~12. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right,

renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

~~17.~~13. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

~~18.~~14. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the

Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.[6]

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

~~19.~~15. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

~~20.~~16. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,[7] except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of th~~e~~at director's or officer's gross negligence or wilful misconduct.

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~~[6] This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

~~[7] The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

~~21.~~17. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")[8] on the Property, which charge shall not exceed an aggregate amount of ~~$●~~$150,000, as security for the indemnity provided in paragraph [~~20~~16] of this Order. The Directors' Charge shall have the priority set out in paragraphs [~~38~~29] and [~~40~~31] herein.

~~22.~~18. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph **[~~20~~16]** of this Order.

**APPROVAL OF ENGAGEMENT OF RA**

19. THIS COURT ORDERS that:

(a) the agreement dated as of March 17, 2024, with effect as of March 6, 2024, pursuant to which the Applicant has engaged Black Swan Advisors Inc. ("**Black Swan**") to provide the services of Edward A. Sellers to act as restructuring advisor to the Applicant (the "**RA**"), a copy of which is attached as an exhibit to the Curtis Affidavit (the "**RA Engagement Letter**"), and the appointment of the RA pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby;

(b) the RA shall not be, or be deemed to be, a director or employee of the Applicant;

~~[8] Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

(c) neither Black Swan nor the RA shall, as a result of the performance of their respective obligations and services in accordance with the terms of the RA Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below);

(d) Black Swan and the RA shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of Black Swan or the RA;

(e) no action or other proceeding shall be commenced in any forum, whether directly or by way of counterclaim, third party claim or otherwise, against or in respect of Black Swan or the RA, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the RA or with leave of this Court on notice to the Applicant, the Monitor, Black Swan and the RA. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor, Black Swan and the RA at least seven (7) days prior to the return date of any such motion for leave; and (f) the obligations of the Applicant to Black Swan and the RA pursuant to the RA Engagement Letter shall be treated as unaffected and shall not be compromised in any way without the consent of the RA, whether by Plan or proposal filed under the *Bankruptcy and Insolvency Act*, R.S.C, 1985, c. B-3, as amended (the "**BIA**") in respect of the Applicant, by operation of a sale or reverse vesting order in respect of some or all of the assets or liabilities of the Applicant, or otherwise.

**APPOINTMENT OF MONITOR**

~~23.~~20. THIS COURT ORDERS that ~~[MONITOR'S NAME]~~Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors,

and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

~~24.~~21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

~~(c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;~~

(c) hold and administer funds in connection with arrangements made between the Applicant, a third party, and the Monitor, or as may be required by order of the court;

(d) advise the Applicant in its preparation of the Applicant's cash flow statements ~~and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender~~;

(e) advise the Applicant in its development of ~~the~~a Plan and any amendments ~~to the Plan~~thereto;

(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on ~~the~~a Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

~~25.~~22. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

~~26.~~23. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to

be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

~~27.~~24. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant ~~and the DIP Lender~~ with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

~~28.~~25. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

~~29.~~26. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a ~~[TIME INTERVAL]~~weekly basis or on such other basis as may be agreed by the Monitor, and, in addition, the Applicant is hereby authorized, going forward, to ~~pay to the Monitor, counsel to the Monitor, and counsel to the Applicant,~~provide professional retainers in ~~the amount[s]~~accordance with the Applicant's cash flow statement filed in support of ~~$● [, respectively,]~~the application for this order, to be held by ~~them~~such professionals as security for payment of their respective fees and disbursements outstanding from time to time.

~~30.~~27. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its

legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

~~31.~~28. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, ~~and~~ the Applicant's counsel and the Chief Restructuring Advisor ("**RA**") shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of ~~$●,~~ $250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs [~~38]~~ 29]and [~~40~~31] hereof.

~~**DIP FINANCING**~~

~~32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed $● unless permitted by further Order of this Court.~~

~~33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.~~

~~34. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.~~

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs **[38]** and **[40]** hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

~~38.~~29. THIS COURT ORDERS that the priorities of the Directors' Charge~~,~~ and the Administration Charge ~~and the DIP Lender's Charge~~, as among them, shall be as follows[9]:

First – Administration Charge ~~(to the maximum amount of $●);~~; and,

Second ~~– DIP Lender's Charge; and~~

~~Third~~ – Directors' Charge ~~(to the maximum amount of $●).~~.

~~39.~~30. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge~~,~~ and the Administration ~~Charge or the DIP Lender's~~ Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

~~40.~~31. THIS COURT ORDERS that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, ~~"Encumbrances") in favour of any Person~~"**Encumbrances**" ) in favour of any Person except for any Person with a properly perfected Encumbrance on the Property who did not receive notice of this Application, provided that, for the avoidance of doubt, the Applicant remains entitled, on notice to those Persons likely to be affected thereby, to seek to subordinate any prior-ranking Encumbrances to the Charges.

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[9] ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

~~41.~~32. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, and the Administration Charge ~~or the DIP Lender's Charge~~, unless the Applicant also obtains the prior written consent of the Monitor~~, the DIP Lender~~ and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

~~42.~~33. THIS COURT ORDERS that the Directors' Charge~~,~~ and the Administration ~~Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's~~ Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") ~~and/or the DIP Lender thereunder~~ shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) ~~neither~~ the creation of the Charges ~~nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents~~ shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant entering into the Commitment Letter, the~~ creation of the Charges~~, or the execution, delivery or performance of the Definitive Documents~~; and

(c) the payments made by the Applicant pursuant to this Order~~, the Commitment Letter or the Definitive Documents,~~ and the granting of the Charges~~,~~ do not and

will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

~~43.~~34. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

**SERVICE AND NOTICE**

~~44.~~35. THIS COURT ORDERS that the Monitor shall (i) without delay, publish ~~in [newspapers specified by the Court]~~, in either the National Edition or the Online version of the Globe and Mail, a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

~~45.~~36. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL https://www.insolvencies.deloitte.ca/en-ca/Pages/antibe.aspx.

~~46.~~37. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, or personal delivery ~~or facsimile transmission~~ to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

~~47.~~38. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

~~48.~~39. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

~~49.~~40. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

~~50.~~41. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for

assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

~~51.~~42. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

~~52.~~43. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

_____

~~Revised: January 21, 2014~~

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ANTIBE THERAPEUTICS INC. (the "Applicant")

***ONTARIO***
**SUPERIOR COURT OF JUSTICE-COMMERCIAL LIST**

Proceeding commenced at Toronto

**INITIAL ORDER**

**Paliare Roland Rosenberg Rothstein LLP**
155 Wellington Street West 35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300

**Kenneth T. Rosenberg** (LSO#21102H)
Tel: 416.646.4304
Email: ken.rosenberg@paliareroland.com

**Massimo Starnino** (LSO#41048G)
Tel: 416.6467431
Email: max.starnino@paliareroland.com

**Kartiga Thavaraj** (LSO# 75291D)
Tel: 416.646.6317
Email: kartiga.thavaraj@paliareroland.com

**Evan Snyder** (LSO# 82007E)
Tel: 416.646.6320
Email: evan.snyder@paliareroland.com

Lawyers for the Applicant

Court File No.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ANTIBE THERAPEUTICS INC. (the "Applicant")

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**APPLICATION RECORD**

**Paliare Roland Rosenberg Rothstein LLP**
155 Wellington Street West 35th Floor
Toronto ON M5V 3H1

**Kenneth T. Rosenberg** (LSO# 21102H)
Tel: Tel: 416.646.4304
Email: ken.rosenberg@paliareroland.com
**Massimo Starnino** (LSO# 41048G**)**
Tel: 416.646.7431
Email: Max.Starnino@paliareroland.com

**Kartiga Thavaraj** (LSO# 75291D)
Tel: 416.646.6317
Email: kartiga.thavaraj@paliareroland.com

**Evan Snyder** (LSO# 82007E)
Tel: 416.646.6320
Email: evan.snyder@paliareroland.com

Lawyers for the Applicant, Antibe Therapeutics Inc.