

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101  
OF THE *COURTS OF JUSTICE ACT***

**MOTION RECORD  
Returnable June 24, 2024**

June 18, 2024	<p><b>Thornton Grout Finnigan LLP</b> Toronto-Dominion Centre 100 Wellington Street West Suite 3200, P.O. Box 329 Toronto, ON M5K 1K7</p> <p><b>Rebecca L. Kennedy (LSO# 61146S)</b> Email: rkennedy@tgf.ca</p> <p><b>Ines Ferreira (LSO # 81472A)</b> Email: <a href="mailto:iferreira@tgf.ca">iferreira@tgf.ca</a></p> <p>Tel: 416-304-1616 Fax: 416-304-1313</p> <p>Lawyers for the Receiver, FTI Consulting Canada Inc.</p>
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**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE  
COURTS OF JUSTICE ACT**

**SERVICE LIST  
(as at June 19, 2024)**

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# TAB 1

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

**B E T W E E N:**

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Applicant

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Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE  
*COURTS OF JUSTICE ACT***

**NOTICE OF MOTION  
(Motion for Approval of Sale Process, Claims Procedure, Receiver's First Report  
and Other Ancillary Relief)**

FTI Consulting Canada Inc. ("**FTI**"), in its capacity as court-appointed receiver and manager (the "**Receiver**") of Antibe Therapeutics Inc. ("**Antibe**") will make a motion to a Judge presiding over the Commercial List on June 24, 2024, at 12:00 p.m. or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard via Zoom teleconference, and the details for which will be made available by the Court prior to the hearing on the CaseLines portal set up for this matter.

**THE MOTION IS FOR:**

1. An Order, in a form substantially similar to the form attached at Tab “3” approving the sale process (the “**Sale Process**”), the sale process order (the “**Sale Process Order**”), and approving the initial solicitation efforts recently commenced and continuation of such efforts under and within the proposed Sale Process and Sale Process Order;
2. An Order (the “**Claims Procedure Order**”) approving the claims procedure (the “**Claims Procedure**”) in a form substantially similar to the form attached at Tab “4” to the Claims Procedure Order, and authorizing the Receiver to immediately commence the Claims Procedure;
3. An Order, in a form substantially similar to the form attached at Tab “5”,
  - (a) approving the First Report of the Receiver dated June 18, 2023 (the “**First Report**”), the activities of the Receiver and its legal counsel, Thornton Grout Finnigan LLP (“**TGF**”) set out therein, and approving the fees and disbursements of the Receiver and TGF as set out in the First Report and the fee affidavits appended thereto;
  - (b) recognizing and enforcing the arbitral award (the “**Arbitral Award**”) rendered on February 27, 2024 in favour of Nuance Pharama Ltd. (“**Nuance**”) pursuant to Article III of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards as adopted by *The Enforcement of Foreign Arbitral Awards Act*, 1996, SS 1996, c E-9.12, and Article 35 of the UNCITRAL Model Law on International Commercial Arbitration as adopted by *The International Commercial Arbitration Act*, SS 1988-89, c I-10.2; and

4. Such further and other relief as counsel may advise and as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

5. On April 9, 2024, Antibe made an application pursuant to the *Companies' Creditors Arrangements Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") (the "**CCAA Proceeding**") for creditor protection. On the same day, the Court granted an initial order (the "**Initial Order**") which, among other things: (i) granted a stay of proceedings up to and including April 18, 2024; and (ii) appointed Deloitte Restructuring Inc. as Court-appointed monitor of the business and financial affairs of Antibe (in such capacity, the "**Monitor**").
6. On April 15, 2024, Antibe served motion materials to seek the granting of an Amended and Restated Initial Order providing for, *inter alia*:
  - (a) an extension of the stay period; and
  - (b) increases to the amounts of the Directors' and Officers' charge and the administration charge that were previously approved in the Initial Order.
7. Also on April 15, 2024, Nuance served a responding and cross-application record objecting to the CCAA Proceeding and seeking, *inter alia*:
  - (a) an order declaring the Upfront Payment amount included within the Arbitral Award is held in trust for Nuance (the "**Constructive Trust Claim**"); and
  - (b) an order appointing the Receiver, without security, of the assets, undertakings and properties of Antibe (the "**Property**").

8. On April 22, 2024, the Honorable Justice Osborne issued an endorsement (the “**Endorsement**”):
  - (a) terminating the CCAA Proceeding<sup>1</sup>;
  - (b) appointing FTI as Receiver; and
  - (c) determining that the Constructive Trust Claim could not be decided on the record before the CCAA Proceeding.
9. The initiation of the receivership proceedings (the “**Receivership**”) and appointment of the Receiver were confirmed to be effective retroactively to April 22, 2024 (the “**Date of Appointment**”) pursuant to an order of the Court issued on April 30, 2024 (the “**Receivership Order**”).

### **Sale Process**

10. The Receiver is seeking approval of a Sale Process intended to maximize the value of the Property for the benefit of all of Antibe’s stakeholders.
11. The Sale Process was designed to be broad and flexible in order to attract as much interest as possible. The Sale Process is intended to solicit interest in, and opportunities for one or more sales of all or substantially all, of Antibe’s Property on an “as-is, where-is” basis.
12. Pursuant to the powers granted to the Receiver in paragraph 4.(j) of the Receivership Order, the Receiver commenced solicitation of Antibe’s Property on June 11, 2024, and is now

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<sup>1</sup> The CCAA Proceeding was terminated effective April 22, 2024 pursuant to an order of the Court issued on May 1, 2024.

seeking approval of the Sale Process, via approval of the Sale Process Order, that comprises of a two-phase bidding process and the following key deadlines (which can be modified if so required pursuant to the terms of the Sale Process):

- (a) Phase I Bid Deadline of July 31, 2024;
  - (b) Phase II Bid Deadline of September 3, 2024;
  - (c) Auction (if applicable), no later than September 11, 2024; and
  - (d) Outside Date for closing of September 27, 2024.
13. The Receiver is of the view that the Sale Process is appropriate in the circumstances, and will result in a fair and competitive bidding process in furtherance of a value maximizing transaction for the benefit of Antibe's stakeholders.

#### **Claims Procedure**

14. The Receiver is currently of the view that it is likely there will be distributions available to unsecured creditors of Antibe. Accordingly, and to progress the Receivership in an efficient manner in parallel with the proposed Sale Process, the Receiver wishes to call for claims and seeks approval of the Claims Procedure Order in the form of the draft Order attached hereto at Tab 4 to the Motion Record. Defined terms used in this section of this report and not otherwise defined herein are as defined in the Claims Procedure Order.
15. The key steps of the Claims Procedure Order are summarized as follows:
- (a) Notice to Claimants, Proof of Claim, Notice of Revision or Disallowance and Dispute Notice (the "**Claims Package**") will be posted on the

Receiver's Website at: <http://cfcanada.fticonsulting.com/antibe/> as soon as practicable;

- (b) The Notice to Claimants will be published in the *Globe and Mail* (National Edition) as soon as practicable;
- (c) Any Claimant wishing to assert a claim must file a Proof of Claim by the Claims Bar Date of August 30, 2024, or any later date ordered by this Court;
- (d) Claimants wishing to file a Proof of Claim may obtain a copy of the relevant forms from the Receiver's website or by contacting the Receiver and requesting that copies of the relevant forms be provided;
- (e) Any Person not receiving a Notice to Claimants, wishing to assert a Claim must file a Proof of Claim by the Claims Bar Date, or any later date ordered by the court, failing which such Claim shall be extinguished;
- (f) Each Proof of Claim shall be reviewed by the Receiver, in consultation with Antibe, and the Receiver shall either accept the claim, or revise or disallow the claim in whole or in part by issuing a Notice of Revision or Disallowance if it disagrees with the Claim set out in the Proof of Claim;
- (g) If a Claimant disagrees with the assessment of the Claim as set out in the Notice of Revision or Disallowance, it must deliver a Dispute Notice within 14 calendar days of the Notice of Revision or Disallowance, or such later date as the Court may order, failing which the Claimant shall be deemed to



accept the amount of the Claim as set out in the Notice of Revision or Disallowance;

- (h) Upon receipt of a Dispute Notice, the Receiver may:
  - i. Attempt to consensually resolve the classification and the amount of the Claim with the Claimant; or
  - ii. Refer the Disputed Claim to a Claims Officer; or
  - iii. Deliver a further Notice of Revision or Disallowance; or
  - iv. Accept the claim as a Proven Claim and advise the Claimant accordingly.
- (i) Any decision by a Claims Officer may be appealed to the court.

16. The Receiver believes that the Claims Procedure is appropriate, fair and reasonable in the circumstances, and respectfully request for its approval be granted by the Court.

### **Ancillary Relief**

#### ***Approval of the Activities and Fees of the Receiver and its Legal Counsel***

17. The First Report sets out the activities the Receiver with the assistance of TGF has undertaken to date. The Receiver seeks approval of the First Report and the activities of the Receiver and TGF described therein.

18. The Receiver also seeks approval of the fees and disbursements of the Receiver and TGF. The Receiver and TGF have maintained detailed records of their professional time and costs since the date of the Receivership Order.

19. The total fees of the Receiver during the period from April 22, 2024 to May 31, 2024 total \$249,366.57, including fees in the amount of \$220,289.00, disbursements in the amount of \$389.37, and Harmonized Sales Tax ("**HST**") of \$28,688.20, as more particularly described in the affidavit of Jim Robinson sworn June 18, 2024 (the "**First FTI Fee Affidavit**"), at Tab 2F of the Motion Record.
20. The total fees and disbursements of TGF for the period from April 17, 2024 to June 7, 2024 total \$111,097.17, including fees in the amount of \$95,452.50, disbursements in the amount of \$2,863.58, and HST of \$12,781.09, as more particularly described in the affidavit of Rebecca Kennedy sworn June 18, 2024 (the "**First TGF Fee Affidavit**") at Tab 2G of the Motion Record.
21. The Receiver is of the view that the fees and disbursements of the Receiver and TGF are reasonable in the circumstances, and have been validly incurred in accordance with the provisions of the Receivership Order and the Receiver's statutory duties. Accordingly, the Receiver respectfully requests the approval of the fees and disbursements of the Receiver and TGF as outlined in the First FTI Fee Affidavit and the First TGF Fee Affidavit.

***Recognizing the Arbitral Award***

22. On February 9, 2021, Antibe entered into a licensing agreement (the "**License Agreement**") with Nuance, which licensed Nuance to sell a drug named ATB-346 ("otenaproxesul", or the "**Drug**") in China. The License Agreement included an upfront payment of US\$20 million (the "**Upfront Payment**"), which was paid by Nuance to Antibe on February 19, 2021.
23. In January 2022, Nuance commenced an arbitration proceeding against Antibe at the

Singapore International Arbitration Centre, a leading global arbitral institution providing services to parties worldwide, alleging that the Company had improperly induced Nuance to enter into the License Agreement. Antibe defended such claim. Pursuant to the terms of the License Agreement, an arbitration hearing was scheduled before the arbitral tribunal (the “**Tribunal**”) in May 2023.

24. On March 1, 2024, the Tribunal determined that Antibe’s omission of certain documents from the virtual data room setup for Nuance during the Licence Agreement diligence period amounted to fraudulent misrepresentation. The Tribunal confirmed the rescission of the License Agreement and ordered Antibe to return the Upfront Payment to Nuance, plus Nuance’s costs and interest (cumulatively, the “**Arbitral Award**”). The Arbitral Award ordered Antibe to pay Nuance approximately CAD\$33.8 million.
25. On March 28, 2024, Nuance served Antibe with an application for the enforcement of the Arbitral Award in Ontario.
26. The Receiver, in consultation with TGF, is of the view that the Arbitral Award should be formally recognized in the Receivership as a judgment against Antibe pursuant to Article III of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards as adopted by *The Enforcement of Foreign Arbitral Awards Act*, 1996, SS 1996, c E-9.12, and Article 35 of the UNCITRAL Model Law on International Commercial Arbitration as adopted by *The International Commercial Arbitration Act*, SS 1988-89, c I-10.2.

**Other Grounds for Relief**

27. Rules 1.04, 1.05, 2.03, 3.02, 16, and 37, 38, 39 of the *Rules of Civil Procedure* (Ontario), R.R.O. 1990, Reg. 194;
28. Sections 13.4, 42, 49, 95 and 96 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
29. Section 121(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and
30. Such further and other grounds as counsel may advise, and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

31. The First Report of the Receiver dated June 18, 2024, including appendices attached thereto; and
32. Such further and other evidence as counsel may advise, and this Honourable Court may permit.

June 18, 2024

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**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT**

**NUANCE PHARMA LTD.**

and

**ANTIBE THERAPEUTICS INC.**

Applicant

Respondent

Court File No.: CV-24-00719237-00CL

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

Proceeding commenced at Toronto

**NOTICE OF MOTION**  
**(Returnable June 24, 2024)**

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# TAB 2

**Court File No. CV-24-00719237-00CL**

**ANTIBE THERAPEUTICS INC.**

**FIRST REPORT OF FTI CONSULTING CANADA INC.,  
AS COURT-APPOINTED RECEIVER**

**June 18, 2024**



Court File No.: CV-24-00719237-00CL

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

BETWEEN

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE**  
***COURTS OF JUSTICE ACT***

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## INTRODUCTION AND BACKGROUND

### The License Agreement and the Arbitral Award

1. On February 9, 2021, Antibe Therapeutics Inc. (“**Antibe**” or, the “**Company**”) entered into a licensing agreement (the “**License Agreement**”) with Nuance Pharma Ltd. (“**Nuance**”) that licensed Nuance to sell a drug named ATB-346 (“**otenaproxesul**”, or the “**Drug**”) in China, Hong Kong, Macau, and Taiwan. The License Agreement included an upfront payment of US\$20 million (the “**Upfront Payment**”), which was paid by Nuance to Antibe on February 19, 2021.
2. In January 2022, Nuance commenced an arbitration proceeding against Antibe at the Singapore International Arbitration Centre alleging that the Company had improperly induced Nuance to enter into the License Agreement. Antibe defended such claim. Pursuant to the terms of the License Agreement, an arbitration hearing was scheduled before the arbitral tribunal (the “**Tribunal**”) in May 2023.
3. On March 1, 2024, the Tribunal determined that Antibe’s omission of certain documents from the virtual data room setup for Nuance during the Licence Agreement diligence period amounted to fraudulent misrepresentation. The Tribunal confirmed the rescission of the License Agreement and ordered Antibe to return the Upfront Payment to Nuance, plus Nuance’s costs and interest (cumulatively, the “**Arbitral Award**”). The Arbitral Award ordered Antibe to pay Nuance approximately CAD\$33.8 million.
4. On March 28, 2024, Nuance served Antibe with an application for the enforcement of the Arbitral Award in Ontario.

### Procedural History

5. On April 9, 2024, Antibe made an application pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”), to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) (the “**CCAA Proceeding**”) for creditor protection. On the same day, the Court granted an initial order (the “**Initial Order**”) which, among other things: (i) granted a stay of proceedings up to and

including April 18, 2024; and (ii) appointed Deloitte Restructuring Inc. as Court-appointed monitor of the business and financial affairs of Antibe (in such capacity, the “**Monitor**”).

6. On April 15, 2024, Antibe served motion materials to seek the granting of an Amended and Restated Initial Order providing for, *inter alia*:
  - (a) an extension of the stay period; and
  - (b) increases to the amounts of the Directors’ and Officers’ charge and the administration charge that were previously approved in the Initial Order.
  
7. Also on April 15, 2024, Nuance served a responding and cross-application record objecting to the CCAA Proceeding and seeking, *inter alia*:
  - (a) an order declaring the Upfront Payment amount included within the Arbitral Award is held in trust for Nuance (the “**Constructive Trust Claim**”); and
  - (b) an order appointing FTI Consulting Canada Inc. (“**FTI**”) as receiver and manager (in such capacities, the “**Receiver**”), without security, of the assets, undertakings and properties of Antibe (the “**Property**”).
  
8. On April 22, 2024, the Honorable Justice Osborne issued an endorsement (the “**Endorsement**”):
  - (a) terminating the CCAA Proceeding<sup>1</sup>;
  - (b) appointing FTI as Receiver; and
  - (c) determining that the Constructive Trust Claim could not be decided on the record before the CCAA Proceeding.
  
9. The initiation of the receivership proceeding (the “**Receivership**”) and appointment of FTI as Receiver were confirmed to be effective April 22, 2024 (the “**Date of Appointment**”) pursuant to an order of the Court issued on April 30, 2024 (the

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<sup>1</sup> The CCAA Proceeding was terminated effective April 22, 2024 pursuant to an order of the Court issued on May 1, 2024.

“**Receivership Order**”). Copies of the Receivership Order and Endorsement are attached hereto as **Appendix “A”**.

10. In conjunction with its appointment, the Receiver engaged Thornton Grout Finnigan LLP (“**TGF**”) as its legal counsel.
11. The Receiver has established a website (the “**Receiver’s Website**”) at <http://cfcanada.fticonsulting.com/antibe/> where copies of materials filed in this proceeding have been made available in electronic format. The Receiver can also be contacted by phone toll-free at +1 (833) 511-7227, or by local number at +1 (416) 649-8082.

#### **PURPOSE OF THE FIRST REPORT**

12. The purpose of this, the Receiver’s first report, (the “**First Report**”) is to provide information to the Court on the following:
  - (a) an overview of the Company, including the FDA Hold (as defined below);
  - (b) the Receiver’s activities since the Date of Appointment;
  - (c) the Receiver’s preliminary review of Nuance’s Constructive Trust Claim;
  - (d) the proposed sale process (the “**Sale Process**”), including the engagement of Bloom Burton Securities Inc. as financial advisor to the Receiver (the “**Financial Advisor**”) to conduct the Sale Process with oversight from the Receiver, among other things, and the Receiver’s motion for the granting of an order approving the Sale Process (the “**Sale Process Order**”);
  - (e) the proposed Claims Procedure (as defined below), and the Receiver’s motion for the granting of an order approving the Claims Procedure (the “**Claims Procedure Order**”);
  - (f) the receipts and disbursements of the Receiver for the period from the Date of Appointment to June 7, 2024; and

- (g) the Receiver's motion for an ancillary order (the "**Ancillary Order**") regarding the following:
  - (i) approving the First Report, and the activities of the Receiver and TGF to date as outlined herein; and
  - (ii) approving the fees and disbursements of the Receiver from the Date of Appointment through May 31, 2024, and the fees and disbursements of TGF from the Date of Appointment through June 7, 2024; and
  - (iii) recognizing the Arbitral Award as a judgment within the Receivership.

#### **TERMS OF REFERENCE AND DISCLAIMER**

13. In preparing the First Report, the Receiver has relied upon audited and unaudited financial information provided by the Company, including its books and records, financial information, forecasts and analysis, in addition to discussions with various parties, including senior management ("**Management**") of, and advisors to, the Company (collectively, the "**Information**").
14. Except as otherwise described in the First Report:
  - (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (b) the Receiver has not examined or reviewed the financial forecasts or projections referred to in the First Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
15. Future-oriented financial information reported in or relied on in preparing the First Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

16. The Receiver has prepared the First Report in connection with the stated purpose above. The First Report should not be relied on for any other purpose.
17. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

## OVERVIEW

18. Antibe was a Canadian biotechnology company incorporated under the *Business Corporations Act* (Ontario) on May 5, 2009 to develop pain and inflammation-reducing drugs.
19. The Company was publicly held and traded on the Toronto Stock Exchange (TSX: ATE). Trading was suspended on April 9, 2024 on the initiation of the CCAA Proceeding and the stock was delisted on May 24, 2024.
20. Antibe's lead drug, a nonsteroidal anti-inflammatory drug named ATB-346, or otenaproxesul (the "**Drug**"), has been in development in different iterations and formulations since 2004.
21. Further information regarding Antibe and the circumstances leading up to the CCAA Proceeding and subsequent to the Receivership can be found on the Receiver's Website under the CCAA Proceeding section, particularly the Monitor's Reports and Motion Materials.

## FDA Hold

22. On March 28, 2024, the United States Food and Drug Administration (the "**FDA**") met with Antibe and advised that it was placing a clinical hold on the abdominoplasty clinical trial being proposed by the Company (the "**FDA Hold**").
23. On April 26, 2024, the FDA issued a formal letter to Antibe indicating that the proposed Phase 2 study for the Drug is on clinical hold, subject to the resolution of certain nonclinical and clinical deficiencies, and information required to resolve the deficiencies (the "**FDA Letter**"). The Company's deficiencies referenced in the FDA

letter included the following as well as other recommendations and requests that are not clinical hold issues:

- (a) the nonclinical data to support the safety of the proposed clinical protocol was deemed inadequate, and that certain studies and data would be required to support the proposed clinical protocol;
  - (b) the nonclinical data did not include sufficient information to address the safety of a color coating material in the Drug's tablet, and that certain data would be required to qualify the safety of the color coat excipient for the proposed clinical trial; and
  - (c) the clinical data did not adequately characterize an injury risk observed in certain studies of the Drug, and the injury risk must be addressed through nonclinical/pharmacokinetic data before proceeding with a clinical study.
24. To understand the implications of the clinical hold, the Receiver liaised with Management, subject matter experts, and the Financial Advisor, to understand the various paths forward in the Receivership.
25. The Receiver is pursuing the option to conduct a short meeting with the FDA to enable the FDA to provide additional clarification on the contents of the FDA Letter (the "**FDA Letter Meeting**"), which will enable the Receiver with input and assistance from Management and the Financial Advisor to understand the deficiencies identified and develop a plan to address such deficiencies. The Receiver understands that two-way discussions are not permissible during the FDA Letter Meeting.
26. Following the FDA Letter Meeting, the Receiver must determine whether it is appropriate in the circumstances to pursue a "Type A" meeting with the FDA (the "**Type A Meeting**"), which permits a forum for the Receiver to hold two-way discussions with the FDA to make suggestions and obtain feedback regarding the deficiencies identified, present additional information or context to the FDA in response to the FDA Letter, and understand the path forward to lift the clinical hold.



27. Preparation for a Type A Meeting will require additional time and resources to be incurred by the estate. Initial estimates suggest that the costs required to prepare for and attend the Type A Meeting could be in excess of \$150 thousand.
28. The Receiver is of the view that it must balance the costs required to prepare for and attend the Type A Meeting versus the impact of potential feedback received that could potentially enhance or detract from the value realized for the Drug in the Sale Process. The Receiver has also been advised that it is likely that interested parties participating in the Sale Process will be sophisticated parties familiar with FDA pharmaceutical approval procedures.
29. The Receiver plans to make a decision as to whether to incur the costs to prepare and execute the Type A Meeting after considering the feedback received from the FDA Letter Meeting, input from Management and the Financial Advisor, discussions with key stakeholders, and based on feedback from interested parties in the Sale Process.

### **Creditors**

30. The Receiver is not aware of any secured creditors who currently hold a security interest in the Property of Antibe; however, as disclosed in the Responding and Cross-Application Record of the Cross-Applicant dated April 15, 2024, filed in the CCAA Proceeding and, as discussed with Nuance during the Receivership, the Receiver understands that Nuance intends to pursue recognition of some or all of the Upfront Payment by way of a Constructive Trust Claim. As at the Date of Appointment, the total amount due to Nuance in respect of the Arbitral Award was approximately \$33.8 million, or approximately 82% of total known unsecured claims of approximately \$40.9 million per the Information.
31. Based on the Information as at the Date of Appointment, the amount owing to the Company's other unsecured creditors totaled approximately \$7.1 million, or approximately 18% of total known unsecured claims of approximately \$40.9 million per the Information.

**RECEIVER'S ACTIVITIES SINCE THE DATE OF APPOINTMENT**

32. Since the Date of Appointment, the Receiver has undertaken a number of activities and initiatives, including:
- (a) attending before the Court on April 22, 2024, in respect of Nuance's cross-application record;
  - (b) engaging with TGF, Antibe's counsel, and the Monitor and its counsel regarding the Receivership Order, and the form of draft order for the termination of the CCAA Proceeding;
  - (c) securing the Company's Property, which includes the following:
    - (i) the Company's operating bank accounts and investment accounts (the "**Company's Bank Accounts**");
    - (ii) the Company's head office location situated at 15 Prince Arthur Avenue in Toronto, Canada (the "**Premises**");
    - (iii) the Company's books and records, including physical and digital records; and
    - (iv) the Property identified at the Premises.
  - (d) opening new estate trust accounts under the Receiver's name (the "**Receiver's Estate Accounts**");
  - (e) arranging for the Company's Bank Accounts to be modified to a deposit only account;
  - (f) arranging for balances in the Company's Bank Accounts to be transferred to the Receiver's Estate Accounts;
  - (g) engaging Kroll Consulting Canada Co. to assist with preserving the Company's digital records in accordance with the Receiver's powers as outlined in paragraph 4(d) of the Receivership Order;
  - (h) segregating funds related to the administrative reserve, and directors' and officers' reserve pursuant to paragraphs 26 to 29 of the Receivership Order;

- (i) preparing the Notice and Statement of Receiver pursuant to sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (as amended, the “**BIA**”) and sending a copy of same to the Company, the Office of the Superintendent of Bankruptcy (“**OSB**”), and to all of the Company’s creditors on record;
- (j) engaging with the Company’s subtenants in relation to the Premises;
- (k) attending at the Premises to:
  - (i) facilitate the retrieval of any Property and the return of employees’ personal belongings;
  - (ii) coordinate the sale of ancillary office assets;
  - (iii) meet with the landlord of the Premises;
  - (iv) meet with the Company’s subtenants; and
  - (v) coordinate the removal of the Company’s physical books and records.
- (l) identifying and implementing cost reduction measures to minimize the costs to be incurred during the Receivership to the extent possible, including:
  - (i) putting on hold all Drug research and development operations;
  - (ii) terminating nine employees and independent contractors; and
  - (iii) exiting the Premises.
- (m) coordinating the processing of records of employment for terminated employees;
- (n) compiling the payroll and employee information required to administer claims pursuant to the *Wage Earners Protection Plan Act* (“**WEPPA**”) for terminated employees;
- (o) engaging with the Company’s finance manager and with Service Canada regarding WEPPA;
- (p) corresponding with the Company’s insurance broker and arranging for the Receiver to be added to the Company’s policies as a named-insured;

- (q) engaging with the Monitor and its counsel to coordinate the return of excess retainer funds;
- (r) reviewing the Company's books and records, with particular import to accounting and financial records;
- (s) engaging with the OSB in respect of the Receivership;
- (t) managing the cash receipts to, and approving the disbursements from, the Receiver's Estate Accounts;
- (u) engaging with the Canada Revenue Agency ("CRA") regarding an audit of the Company's payroll remittances (the "**Payroll Audit**");
- (v) engaging with the Company's finance manager to compile and send CRA the information requested in the Payroll Audit;
- (w) preparing and filing applicable tax and other returns as necessary;
- (x) reviewing the Company's intellectual property and engaging with TGF, Management, and the Financial Advisor to develop a realization strategy in respect of same;
- (y) tracing the Upfront Payment funds subject to the Constructive Trust Claim asserted by Nuance through the Company's Bank Accounts;
- (z) corresponding and communicating regularly regarding pending matters with TGF;
- (aa) corresponding and communicating with several stakeholders and/or their counsel;
- (bb) establishing and maintaining the Receiver's Website, where all materials filed in connection with the Receivership are available in electronic format; and
- (cc) preparing this First Report and the corresponding motion materials.

### **NUANCE CONSTRUCTIVE TRUST CLAIM**

33. In consultation with TGF, the Receiver understands that a constructive trust is a proprietary remedy awarded by courts in cases where personal monetary compensation

is inadequate, and there is a sufficient connection between the plaintiff's contribution and the property in which the trust is claimed.<sup>2</sup>

34. The Receiver understands that a constructive trust is a vehicle of equity through which one person is required by operation of law and regardless of any intention to hold certain property for the benefit of another.<sup>3</sup> In Canada, constructive trusts are understood primarily as a remedy, which may be imposed at a court's discretion where good conscience so requires – for example, where one party is in possession of property of another party without a juristic reason for such possession.<sup>4</sup>
35. On the legal analysis and advice of TGF, the Receiver is of the view that, in accordance with the applicable case law, Nuance meets the requisite test for asserting a constructive trust over current funds that can be properly traced to the Upfront Payment of US\$20 million made to Antibe.
36. The Receiver has completed a tracing analysis of the Upfront Payment through the Company's Bank Accounts. The Receiver's analysis indicates that the remaining funds on hand that could be properly traced back to the Upfront Payment is approximately \$519 thousand (the "**Traceable Funds**"). Accordingly, the Receiver is of the view that the Traceable Funds are subject to a constructive trust for Nuance<sup>5</sup>.
37. The Receiver has communicated its findings regarding the Traceable Funds with counsel to Nuance, and the Receiver understands that counsel is seeking instructions from Nuance as at the date of this First Report.

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<sup>2</sup> *Peter v. Beblow*, [1993 CanLII 126](#) (SCC), [1993] 1 SCR 980 [*Beblow*].

<sup>3</sup> *Moore v. Sweet*, 2018 SCC 52 at [para 32](#) [*Moore*] citing Waters' Law of Trusts in Canada (4th ed. 2012), by D. W. M. Waters, M. R. Gillen and L. D. Smith, at p. 478 as cited in

<sup>4</sup> *Ibid* at [para 32](#).

<sup>5</sup> The Receiver understands that Nuance will be entitled to file a Proprietary Claim pursuant to the Claims Procedure for the Traceable Funds.

## SALE PROCESS

### Overview

38. Pursuant to the Receivership Order, the Receiver is authorized to market any or all of the Property. A primary objective of the Receivership is to create a stabilized environment to allow the Receiver to realize on the Property and optimize recoveries for stakeholders of Antibe.
39. The Sale Process is intended to solicit interest in opportunities for a sale of all or part of the Company's assets (the "**Opportunity**"). The Opportunity may include one or more sales of all or substantially all of the Property (each, a "**Transaction**").
40. Marketing the Company's business on a status quo going concern basis was not viable given;
  - (a) the Company has no revenue and was incurring significant operating expenses;
  - (b) the FDA issued the FDA Hold Letter; and
  - (c) there was a lack of certainty with respect to the actions required, timeline, cost and likelihood of resolving the FDA Hold.
41. The Sale Process contemplates two-stages whereby interested parties are required to submit letters of interest by the Phase 1 Bid Deadline (as defined below) and binding offers by the Phase 2 Bid Deadline (as defined below).

### Engagement of the Financial Advisor

42. The pharmaceutical industry is unique and requires significant technical knowledge and deep relationships to operate within. To augment the internal capabilities of the Receiver, the Receiver was of the view that the best outcome for stakeholders of Antibe would be achieved by engaging an advisory firm that specializes in providing financial advisory and investment banking services specifically in the pharmaceutical industry to conduct the Sale Process and also advise the Receiver from a technical pharmaceutical perspective as required. The Receiver held discussions with and requested proposals for

financial advisory and investment banking services from three external parties and FTI's internal capital advisory group (“**FTICA**”):

- (a) all parties contacted are reputable sale and investment banking advisors with relevant and current experience in the life science and pharmaceutical industries;
  - (b) two investment banks based in the United States, with a dedicated team focused on the pharmaceutical market, rejected the opportunity with both investment banks indicating the anticipated Sale Process, and circumstances surrounding Antibe and the Drug did not align with their respective fee structures (i.e. typically a work fee and success fee);
  - (c) FTICA put forward a proposal based on an hourly rate fee structure combined with a monthly maximum limit and no success fee; and
  - (d) the Financial Advisor, a Toronto-based boutique investment bank specializing in the life science and pharmaceutical industries, submitted a proposal based on a flat monthly fee with no success fee. Through discussions with Management and the Financial Advisor, the Receiver was satisfied that the competitive pricing in the proposal from the Financial Advisor vis-à-vis the FTICA proposal reflected the Financial Advisor's ability to leverage its existing familiarity with the Company, gained during several fundraising and other engagements provided for Antibe over more than 5 years.
43. Pursuant to its powers outlined in paragraph 4(d) of the Receivership Order, the Receiver engaged the Financial Advisor to conduct the Sale Process with oversight from the Receiver. A copy of the engagement letter dated May 27, 2024 between the Receiver and the Financial Advisor is attached hereto as **Appendix “B”**.
44. The key terms of the Financial Advisor engagement letter are summarized as follows:
- (a) **Services:** The Financial Advisor shall provide such financial advisory services at the direction of the Receiver, including conducting the appropriate review and preparation of the solicitation materials, running the broad auction process, developing the outreach lists, launching and conducting the outreach, managing

the tracking process, assisting in the due diligence process with interested parties, negotiating and soliciting expressions of interest, arranging and scheduling calls and meetings in support of the process and supporting the negotiation of definitive deal terms and agreements with the counterparty.

- (b) **Compensation:** \$50 thousand per month.
- (c) **Expenses:** The Financial Advisor will be entitled to reimbursement of reasonable out-of-pocket costs and expenses incurred in this matter on the Receiver's behalf with certain expenses requiring prior approval from the Receiver.
- (d) **Term and Termination:** Engagement with the Financial Advisor is contemplated to end on the earlier of the closing of the Transaction or September 30, 2024, or such other date as may be mutually agreed. The Receiver or the Financial Advisor may terminate this Agreement at any time upon ten (10) days written notice to the other party.

### **Sale Process Procedures**

45. The key components of the Sale Process include the following (capitalized terms not defined in this section have the meaning ascribed to them in the Sale Process procedures, attached hereto as **Appendix "C"**):
- (a) the Financial Advisor with oversight from the Receiver is conducting the Sale Process;
  - (b) any transaction will be on an "as-is, where-is" basis and all right, title and interest in the assets will be transferred to a purchaser free and clear of any claims or interests pursuant to an approval and vesting order;
  - (c) beginning on June 11, 2024, after consultation with the Financial Advisor, the Financial Advisor has sent a solicitation process letter summarizing the opportunity (the "**Teaser**") to over 990 known potential bidders (a "**Potential Bidder**") to notify them of the Sale Process and invite them to execute a non-disclosure agreement ("**NDA**") in order to perform due diligence and participate in the Sale Process. The Potential Bidders are comprised of both strategic and



financial parties who, in the Receiver's judgment in consultation with the Financial Advisor, may be interested in acquiring some or all of the Property. The Receiver will also send a copy of the Teaser to any person who requests a copy or who is identified by the Receiver at a later date as a Potential Bidder (as defined in the Sale Process Order). A copy of the Teaser is attached hereto as **Appendix "D"**;

- (d) by June 21, 2024, the Financial Advisor with oversight from the Receiver will have prepared an electronic data room ("**EDR**") containing information about the Company and the Opportunity;
- (e) the Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered an executed NDA and provided information as to their financial ability and wherewithal to close a transaction, in the Receiver's sole discretion, access to due diligence materials and information relating to the Property as the Receiver deems appropriate. Due diligence shall include access to the EDR and may also include management presentations and other matters which a Potential Bidder may reasonably request and as to which the Receiver may agree. The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. The Receiver will not be obligated to furnish any information relating to the Property to any person other than to Potential Bidders.
- (f) the Receiver has also prepared a draft form of acknowledgment whereby Potential Bidders agree to be bound by the provisions of the Sale Process, pending Court approval of the Sale Process.

46. Subject to Court approval, the following table outlines the key milestones under the Sale Process:

Milestone	Timeline	Targeted Date
Commencement Date		11-Jun-24
Preparation of Sale Process materials:		
(i) Teaser, Buyer list, NDA	Completed	11-Jun-24
(ii) Investment Memorandum, Notices for trade publication, populate EDR	10 days	21-Jun-24
Phase 1 Bid Deadline	50 days	31-Jul-24
Assessment of Phase 1 Bids	9 days	9-Aug-24
Phase 2 Bid Deadline	25 days	3-Sep-24
Auction Date (if applicable)	8 days	11-Sep-24
Finalize Transaction agreement	8 days	11-Sep-24
Sale Approval Motion (as defined below) in Court	As soon as reasonably practicable	Sep-20-24 (outside date)
Closing of the Transaction	As soon as reasonably practicable	Sep-27-24 (outside date)

47. Pursuant to the Receivership Order, the Receiver is authorized to market any and all of the Property of the Company, which includes the following:

- (a) intellectual property, patents and other related books and records pertaining to:
- (i) the Drug;
  - (ii) additional preclinical stage drugs under development:
    - (1) ATB-352, an H<sub>2</sub>S-ketoprofen<sup>6</sup> analog for specialized pain indication;
    - (2) H<sub>2</sub>S-releasing ketorolac for acute pain; and
    - (3) H<sub>2</sub>S-releasing mesalamine for inflammatory bowel disease.

<sup>6</sup> H<sub>2</sub>S, Hydrogen Sulfide, is a gastric protectant.

- (iii) all other documents, files, records, correspondence, electronic information (including digital information and web page content), and other data and information, financial or otherwise related to the business and Property.
- (b) accounts receivable in relation to the Company's pre-filing sale of a subsidiary;
- (c) tax credits and available tax losses; and
- (d) all other miscellaneous and ancillary assets.

### Phase I

48. Potential Bidders that wish to submit a bid to purchase the Property (a "**Phase 1 Bidder**") shall submit a non-binding letter of intent (an "**LOI**") that complies with all of the following requirements by 1:00 PM (EST) on July 31, 2024 (the "**Phase 1 Bid Deadline**"), or such later date as may be extended by the Receiver at its discretion (each LOI that meets the requirements set out below, a "**Qualified Phase 1 Bid**"):
- (a) the LOI must be duly executed by all required parties;
  - (b) the LOI must be received by the Phase 1 Bid Deadline;
  - (c) the LOI identifies the Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Phase 1 Bidder for all purposes regarding the contemplated transaction;
  - (d) the LOI clearly indicates that the Phase 1 Bidder is seeking to acquire all, substantially all, or a portion of the Property;
  - (e) the LOI contains such other information as may be reasonably requested by the Receiver;
  - (f) the LOI identifies the following:
    - (i) the proposed purchase price in Canadian dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Phase 1 Bidder and key assumptions supporting the valuation of the bid;

- (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) a specific indication of the financial capability of the Phase 1 Bidder and the expected structure, financing, and financing status for the transaction;
  - (iv) a description of the conditions and approvals required to complete the closing of the transaction;
  - (v) a description of those liabilities and obligations (including operating liabilities) which the Phase 1 Bidder intends to assume, and which such liabilities and obligations it does not intend to assume; and
  - (vi) any other terms or conditions of the LOI that the Phase 1 Bidder believes are material to the transaction.
49. The Receiver at its sole discretion may waive strict compliance with any one or more of the requirements above.
50. Following the Phase 1 Bid Deadline, the Receiver and the Financial Advisor will review the LOIs that are selected as the most favourable Phase 1 Qualified Bids, which will then be deemed “**Phase 2 Qualified Bidders**”.

## Phase 2

51. Phase 2 Qualified Bidders that wish to make a formal offer to purchase the Property shall submit a binding offer (a “**Bid**”) that complies with all of the following requirements by 1:00 PM (EST) on September 3, 2024 or as may be modified either in the Bid process letter that may be circulated to Phase 2 Qualified Bidders, or later at the sole discretion of the Receiver (the “**Phase 2 Bid Deadline**”):
- (a) the Bid must be a binding offer to acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”);
  - (b) the Bid (either individually or in combination with other bids that make up one bid) is an offer to purchase the Property and is consistent with any necessary terms and conditions established by the Receiver and communicated to Bidders;

- (c) the Bid includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- (d) the Bid includes duly authorized and executed transaction agreements, which provide:
  - (i) the purchase price (the "**Purchase Price**") for the Sale Proposal;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) a description of the conditions and approvals required to complete the closing of the transaction;
  - (iv) a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
  - (v) any other terms or conditions of the Bid that the Bid Phase 2 Qualified Bidder believes are material to the transaction; and
  - (vi) any and all exhibits and schedules thereto;
- (e) the Bid is accompanied by a deposit equal to ten percent (10%) of the Purchase Price, to be held and dealt with in accordance with the Sale Process procedures;
- (f) the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Receiver to make a determination as to the Phase 2 Qualified Bidder's financial wherewithal and other capabilities to consummate the proposed transaction;
- (g) the Bid is not conditioned on (i) the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, or (ii) obtaining financing. Any conditions and

approvals required to complete the Sale Proposal will be included in the transaction documents;

- (h) the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is otherwise participating or benefiting from such bid;
  - (i) the Bid includes acknowledgements and representations of the Phase 2 Qualified Bidder that the Phase 2 Qualified Bidder:
    - (i) is completing the Transaction on an “as-is, where-is” basis;
    - (ii) has had an opportunity to conduct any and all due diligence regarding the Property and the Company prior to making its Bid;
    - (iii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
    - (iv) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the Company or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
  - (j) the Bid is received by the Phase 2 Bid Deadline; and
  - (k) the Bid contemplates closing the Transaction set out therein immediately following the granting of an order by the Court approving the same.
52. Following the Phase 2 Bid Deadline, the Receiver and the Financial Advisor will assess the Bids received. The Receiver, in consultation with the Financial Advisor, will designate the most competitive bids that comply with the foregoing requirements to be “**Phase 2 Qualified Bids**”. No Bids received shall be deemed not to be Phase 2 Qualified Bids without the approval of the Receiver. Only Phase 2 Qualified Bidders whose bids have been designated as Phase 2 Qualified Bids are eligible to become the Successful Bidder(s).

53. The Receiver may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bids to be a Phase 2 Qualified Bid. The Receiver will be under no obligation to negotiate identical terms with, or extend identical terms to, each Bidder.
54. The Receiver shall notify each Bidder in writing as to whether its Bid constituted a Phase 2 Qualified Bid within two (2) business days of the Phase 2 Bid Deadline, or at such later time as the Receiver deems appropriate.
55. The Receiver may aggregate separate Bids from unaffiliated Bidders to create one Phase 2 Qualified Bid.
56. Phase 2 Qualified Bids will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the net value provided by such bid, (ii) the identity, circumstances and ability of the Bidder to successfully complete such Transaction(s), (iii) the proposed Transaction documents, (iv) the assets included or excluded from the bid, (v) any related restructuring costs, (vi) the likelihood and timing of consummating such Transaction, each as determined by the Receiver and (vii) any other factor deemed relevant by the Receiver.
57. The Receiver reserves the right to negotiate with any bidder with respect to their Phase 2 Qualified Bid if the Receiver determines such negotiations to be in the best interest of the Sale Process.

#### Auction

58. If the Receiver receives at least two Phase 2 Qualified Bids and determines, in consultation with the Financial Advisor, that they are competitive, the Receiver at its discretion may proceed to conduct and administer an Auction in accordance with the terms of this Sale Process (the “**Auction**”). Instructions to participate in the Auction, which will take place via video conferencing, or in person, as determined by the Receiver, and will be provided to Qualified Parties (as defined below) not less than 48 hours prior to the Auction.

59. Only parties that provided a Phase 2 Qualified Bid by the Phase 2 Bid Deadline, as confirmed by the Receiver (collectively, the “**Qualified Parties**”), shall be eligible to participate in any Auction. No later than 5:00 p.m. (EST) on the day prior to any Auction, each Qualified Party must inform the Receiver whether it intends to participate in the Auction. The Receiver will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction.
60. If the Receiver conducts an Auction, it will be governed by the following procedures:
- (a) **Participation at the Auction:** Only the Qualified Parties, the Receiver and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Receiver shall provide all Qualified Bidders with the details of the lead bid by 5:00 PM (EST) no later than five (5) days after the Bid Deadline. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 5:00 PM (EST) on the Business Day prior to the Auction;
  - (b) **No Collusion:** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bid;
  - (c) **Minimum Overbid:** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Receiver, in consultation with the Financial Advisor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Receiver’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of \$100 thousand;
  - (d) **Bidding Disclosure:** The Auction shall be conducted such that all bids will be made and received in one group video-conference or otherwise, on an open basis,



and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; however, that the Receiver in its discretion, may establish separate video conference rooms to permit interim discussions between the Receiver and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;

- (e) **Bidding Conclusion:** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s);
- (f) **No Post-Auction Bids:** No bids will be considered for any purpose after the Auction has concluded; and
- (g) **Auction Procedures:** The Receiver shall be at liberty to revise the auction rules set out herein or set additional procedural rules prior to or at the Auction as it sees fit.

#### Selection of Successful Bid

- 61. If the Receiver elects to conduct an Auction, before the conclusion of the Auction, the Receiver will review and evaluate each Qualified Bid and identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
- 62. The Receiver reserves the right to negotiate and select a Successful Bid without the requirement to perform an Auction if, in the Receiver’s opinion, an Auction will not lead to a better bid as part of the Sale Process.
- 63. The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the

Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the Receiver.

### **Approval of Sale Process and Sale Process Order**

64. The Receiver is seeking approval of the Sale Process and granting of the Sale Process Order for the following reasons:
- (a) the Sale Process provides for a broad marketing of the Company's Property by the Receiver, in consultation with the Financial Advisor. The Receiver has extensive experience selling distressed assets generally, and the Financial Advisor has extensive experience selling assets specifically in the life sciences and pharmaceutical industries;
  - (b) the Sale Process procedures allow for a fair, efficient and transparent test for the benefit of all stakeholders;
  - (c) the bidding requirements, as described in the Sale Process, are reasonable in the circumstances as they provide sufficient hurdles to ensure that interested parties are real, have the willingness and ability to consummate a transaction, but are not unduly burdensome to discourage participation by potential bidders;
  - (d) the proposed timelines in the Sale Process are appropriate in light of, among other things:
    - (i) they are sufficient to allow interested parties to perform diligence and submit offers;
    - (ii) the Financial Advisor already possesses a deep familiarity with the Company and the Drug;
    - (iii) the Company's operations and staffing headcount has been significantly reduced in order to maintain a core team to support completion of a transaction and minimize the amount of the estate's depletion of cash during the Sale Process; however, the Company does not have any operating cash flow to maintain this core team indefinitely;

- (iv) the Company's prior efforts to secure additional financing prior to the CCAA Proceeding ("**Prior Financing Solicitation Efforts**") were unsuccessful and have been further impacted by the FDA Hold;
- (v) the Prior Financing Solicitation Efforts and the Financial Advisor's involvement in same has provided the Receiver with a detailed listing of interested parties who are likely to include the parties who would be willing and able to complete a transaction within the proposed timeline; and
- (vi) the Receiver notes that the above Sale Process timelines are consistent in the circumstances with other similar receivership sale processes, and can be adjusted by the Receiver at its discretion if required.

65. Overall, it is the Receiver's view the Sale Process procedures and timeframe are reasonable in the circumstances, and afford the Company with an opportunity to achieve a successful sale or restructuring transaction while utilizing estate resources.

## CLAIMS PROCEDURE

66. The Receiver is seeking approval of the Claims Procedure Order in the form of the draft Order attached hereto at **Appendix "E"**. Capitalized terms not defined in this section have the meaning ascribed to them in the Claims Procedure Order.
67. The key steps of the Claims Procedure Order are summarized below:
- a) the Notice to Claimants, Proof of Claim, Notice of Revision or Disallowance and Dispute Notice (the "**Claims Package**") will be posted on the Receiver's Website as soon as practicable;
  - b) the Notice to Claimants will be published in the *Globe and Mail* (National Edition) as soon as practicable;
  - c) any Claimant wishing to dispute the Notice to Claimants must file a Notice of Dispute by the Claims Bar Date of August 30, 2024 or any later date ordered by this Court. The Receiver, in consultation with Antibe, will review the Notices of

Dispute and shall advise a Claimant in writing if the Receiver does not accept all or any part of the Claim asserted in the Notice of Dispute;

- d) Claimants wishing to file a Proof of Claim may obtain a copy of the relevant forms from the Receiver's website or by contacting the Receiver and requesting that copies of the relevant forms be provided;
- e) any Person not receiving a Notice to Claimants and wishing to assert a Claim must file a Proof of Claim by the Claims Bar Date, or any later date ordered by this Court, failing which such Claim shall be extinguished;
- f) Proofs of Claim shall be reviewed by the Receiver, in consultation with Antibe, and the Receiver shall either: (i) accept the claim; or, (ii) revise or disallow the claim, in whole or in part, by issuing a Notice of Revision or Disallowance if it disagrees with the Claim set out in the Proof of Claim;
- g) if a Claimant disagrees with the assessment of the Claim as set out in the Notice of Revision or Disallowance, it must deliver a Dispute Notice within 14 calendar days of the Notice of Revision or Disallowance, or any later date as ordered by this Court, failing which the Claimant shall be deemed to accept the amount of the Claim as set out in the Notice of Revision or Disallowance;
- h) upon receipt of a Dispute Notice, the Receiver may:
  - i. attempt to consensually resolve the classification and the amount of the Claim with the Claimant; or
  - ii. refer the Disputed Claim to a Claims Officer; or
  - iii. deliver a further Notice of Revision or Disallowance; or
  - iv. accept the claim as a Proven Claim and advise the Claimant accordingly.
- i) any decision by a Claims Officer may be appealed to this Court.

68. The Receiver is of the view that the Claims Procedure is appropriate, fair and reasonable in the circumstances, and respectfully request for its approval be granted by this Court.

## RECEIPTS AND DISBURSEMENTS

69. The Receiver's receipts and disbursements for the period from the Date of Appointment to June 7, 2024 (the "**Interim R&D**") are summarized below:

(in 000's)	Funds in Receiver's Control				Antibe Accounts	Total
	Estate Accounts		Segregated	Total	Total	Total
	CAD \$	US \$	CAD \$	CAD \$*	CAD \$*	
<b>Receipts</b>						
Transfer from Company Banking	6,401	5,320	400	14,110		14,110
Return of Deposit	32	11	-	48	-	48
Interest Income	20	19	1	47	-	47
<b>Total Receipts</b>	<b>6,454</b>	<b>5,350</b>	<b>401</b>	<b>14,205</b>	<b>-</b>	<b>14,205</b>
<b>Disbursements</b>						
Transfer to Estate Accounts					(14,110)	(14,110)
Professional Fees	(249)	-	(131)	(380)	-	(380)
Payroll and employee costs	(156)	(94)	-	(285)	-	(285)
Other operating expenses	(3)	-	-	(3)	-	(3)
<b>Total Disbursements</b>	<b>(409)</b>	<b>(94)</b>	<b>(131)</b>	<b>(668)</b>	<b>(14,110)</b>	<b>(14,779)</b>
<b>Net Cash Flow</b>	<b>6,045</b>	<b>5,256</b>	<b>270</b>	<b>13,537</b>	<b>(14,110)</b>	<b>(574)</b>
Opening Balance, April 22, 2024	-	-	-	-	19,110	19,110
<b>Closing Balance, June 7, 2024</b>	<b>6,045</b>	<b>5,256</b>	<b>270</b>	<b>13,537</b>	<b>5,000</b>	<b>18,537</b>

\* US denominated transactions were translated to Canadian Dollars using the Bank of Canada exchange rate as at June 7, 2024.

70. Transfers from the Company's Bank Accounts include:
- approximately \$127 thousand and US\$3.46 million were transferred to the Receiver's Estate Accounts from the Company's Bank Accounts;
  - Approximately \$6.67 million and US\$1.86 million were transferred to the Receiver's Estate Accounts from the Company's Bank Accounts maintained by iA Private Wealth ("iAPW").
71. A guaranteed investment certificate ("GIC") with a \$5 million principal balance remains invested with iAPW and is reflected in the Closing Balance in the Antibe Accounts in the Interim R&D above. The GIC is scheduled to mature on July 2, 2024, and will be transferred upon maturity, inclusive of the interest earned thereon, to the Receiver's Estate Accounts.

72. Outstanding deposits and retainers totaling \$32 thousand and US\$11 thousand have been recovered from the Company's vendors and professional service providers.
73. Pursuant to paragraphs 26 to 29 of the Receivership Order, the Receiver established a segregated estate trust account (the "**Segregated Account**") to hold reserve funds totaling \$400 thousand in relation to charges established during the CCAA Proceeding. The balance held in the Segregated Account initially included:
- (a) \$250 thousand held in reserve for amounts subject to the administration charge granted during the CCAA Proceeding; and
  - (b) \$150 thousand held in reserve for amounts subject to the CCAA directors and officers charge granted during the CCAA Proceeding.
74. After payment of certain outstanding invoices of parties covered by the administration charge of approximately \$131 thousand, the Segregated Account currently holds approximately \$270 thousand.
75. Professional Fees include approximately \$249 thousand of the Receiver's fees and expenses for activities of the Receiver outlined in this First Report.
76. Payroll and employee costs include payroll, independent contractor payments, employee expense reimbursements, payroll tax remittances and employee benefits.
77. Other operating expenses includes payments to the Company's IT service provider and to the Company's legal counsel in relation to the Company's patent registrations.

## **THE ANCILLARY ORDER**

### **Approval of the Activities and Conduct of the Receiver and TGF**

78. The Receiver is seeking the approval of this First Report, and the activities and conduct of the Receiver and TGF described herein.

79. The Receiver respectfully submits that its actions, conduct, and activities in this proceeding have been carried out in good faith and in accordance with the Receivership Order and should therefore be approved.

#### **Approval of the Fees of the Receiver and TGF**

80. Pursuant to paragraphs 19 to 21 of the Receivership Order, the Receiver and its legal counsel shall (i) be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and (ii) pass their accounts from time to time before this Court.
81. The Receiver and TGF have maintained detailed records of their professional time and costs. The total fees and disbursements of the Receiver for the period from April 22, 2024 to May 31, 2024 total \$249,366.57, including fees in the amount of \$220,289.00, disbursements in the amount of \$389.37, and Harmonized Sales Tax ("HST") of \$28,688.20, as more particularly described in the affidavit of Jim Robinson sworn June 18, 2024 (the "**First FTI Fee Affidavit**"), a copy of which is appended hereto as **Appendix "F"**.
82. The total fees and disbursements of TGF for the period from April 17, 2024 to June 7, 2024 total \$111,097.17, including fees in the amount of \$95,452.50, disbursements in the amount of \$2,863.58, and HST of \$12,781.09, as more particularly described in the affidavit of Rebecca Kennedy sworn June 18, 2024 (the "**First TGF Fee Affidavit**", and together with the First FTI Fee Affidavit, the "**First Fee Affidavits**"), a copy of which is appended hereto as **Appendix "G"**.
83. The Receiver respectfully submits that the fees and disbursements incurred by the Receiver and TGF, as described in the First Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order. Accordingly, the Receiver respectfully requests the approval of the fees and disbursements of the Receiver and TGF.

### **Recognition of the Arbitral Award**

84. The Receiver, in consultation with TGF, has reviewed the Arbitral Award, which Antibe has previously acknowledged is final and binding<sup>7</sup>.
85. Counsel to Nuance has requested that the Receiver seek recognition of the Arbitral Award so it is properly recognized in the Receivership without any determination at present with respect to its priority and the Constructive Trust Claim.
86. Given the circumstances surrounding the Arbitral Award ultimately leading to this Receivership, acknowledgment of the Arbitral Award by Antibe prior to the Receivership, and the Receiver's review of the Arbitral Award, the Receiver is of the view that the Arbitral Award should be formally recognized in the Receivership as a judgment against Antibe pursuant to Article III of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards as adopted by *The Enforcement of Foreign Arbitral Awards Act*, 1996, SS 1996, c E-9.12, and Article 35 of UNCITRAL Model Law on International Arbitration as adopted by The International Commercial Arbitration Act, SS 1988-89, c I-10.2.

### **CONCLUSION AND RECOMMENDATION**

87. For the reasons stated in this First Report, the Receiver respectfully requests and recommends that this Honourable Court approve the Sale Process, and grant the relief outlined in the Sale Process Order, the Claims Procedure Order, and the Ancillary Order.

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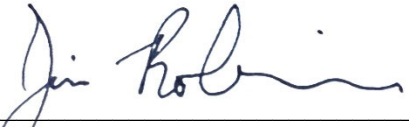
<sup>7</sup> Endorsement of Justice Osborne dated April 22, 2024 in the Matter of a Plan of Compromise or Arrangement of Antibe Therapeutics Inc., Court File No. CV-24-00717410-00CL, at para 78.



The Receiver respectfully submits this, the First Report, to the Court.

Dated this 18<sup>th</sup> day of June, 2024.

**FTI Consulting Canada Inc.,**  
solely in its capacity as Court-appointed Receiver and Manager of  
Antibe Therapeutics Inc.,  
and not in its personal or corporate capacity

Per:   
\_\_\_\_\_  
Jim Robinson  
Senior Managing Director

# **APPENDIX “A”**

**APPENDIX "A"**

Court File No. CV-24-00719237-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE

)

MONDAY, THE 22<sup>nd</sup>

JUSTICE OSBORNE

)

DAY OF APRIL, 2024

)

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**ORDER**

**(appointing Receiver)**

**THIS MOTION** made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing FTI Consulting Canada Inc. ("**FTI**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Antibe Therapeutics Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavits of Mark Lotter sworn March 28 and April 15, 2024 (collectively, the "**Lotter Affidavits**") and the Exhibits thereto, the affidavits of Scott Curtis dated April 8 and April 17, 2024 and the Exhibits thereto, the Pre-filing Report of Deloitte Restructuring Inc. in its capacity as proposed monitor, and the First Report of Deloitte Restructuring Inc. in its capacity as Monitor all filed in connection with Court File No. CV-24-00717410-00CL, and on

hearing the submissions of counsel for the Applicant, the Respondent, the Receiver and Deloitte Restructuring Inc. in its capacity as court-appointed monitor of the Respondent, no one appearing although duly served as appears from the affidavit of service of Alexander C. Payne sworn April 22, 2024 and on reading the consent of FTI to act as the Receiver,

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Cross-Application and the Cross-Application is hereby abridged and validated so that this Cross-Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lotter Affidavits.

### **APPOINTMENT**

3. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, FTI is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

### **RECEIVER'S POWERS**

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security

personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed

shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$1,000,000, provided that the aggregate consideration for all such transactions does not exceed \$2,500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the

Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver'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 Receiver'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 Receiver, or by further Order of this Court upon



application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor 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 all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (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 THE RECEIVER**

12. **THIS COURT ORDERS** that 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 Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

15. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such

amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

19. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SEGREGATED FUNDS**

26. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to:

- (a) Segregate funds in the amount of the Administration Charge, being \$250,000, into a separate account of the Receiver (the "**Administration Charge Account**");

- (b) segregate funds in the amount of the Directors' Charge, being \$150,000, into a separate account of the Receiver (the “**Directors’ Charge Account**”).

27. **THIS COURT ORDERS** that the Administration Charge Account is subject to the Administration Charge granted in the Initial Order dated April 9, 2024, in the court file CV-24-00717410-00CL, as such charge has been limited by the CCAA Termination Order to be granted in the proceedings having court file number CV-24-00717410-00CL.

28. **THIS COURT ORDERS** that the Directors’ Charge Account is subject to the Directors’ Charge granted in the Initial Order dated April 9, 2024, in the court file CV-24-00717410-00CL, as such charge has been limited by the CCAA Termination Order to be granted in the proceedings having court file number CV-24-00717410-00CL.

29. **THIS COURT ORDERS** that the Receiver’s Charge and the Receiver’s Borrowing Charge shall be subordinate to the Administration Charge with respect to the Administration Charge Account and the Directors' Charge with respect to the Directors' Charge Account.

#### **SERVICE AND NOTICE**

30. **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 [www.cfcanada.fticonsulting.com/antibe](http://www.cfcanada.fticonsulting.com/antibe).

31. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is 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, personal delivery or facsimile

transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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**

32. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

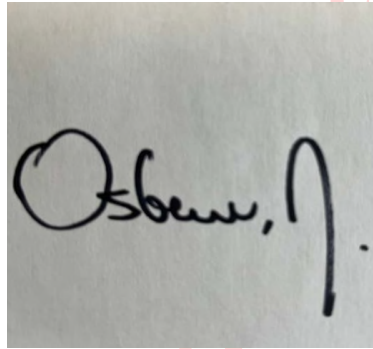
33. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

34. **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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

35. **THIS COURT ORDERS** that the Receiver 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 Receiver 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.

36. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

37. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Antibe Therapeutics Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 22<sup>nd</sup> day of April, 2024 (the "**Order**") made in an action having Court file number CV-24-00719237-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2024.

FTI Consulting Canada Inc., solely in its  
capacity as Receiver of the Property, and not in  
its personal capacity

Per: \_\_\_\_\_

Name:

Title:

NUANCE PHARMA LTD.  
Applicant

-and-

ANTIBE THERAPEUTICS INC.  
Respondent  
Court File No. CV-24-00719237-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**  
**(Appointing Receiver)**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto ON M5X 1A4

**Lincoln Caylor (#37030L)**  
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Telephone: 416.777.6121

Lawyers for the Applicant





ONTARIO SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**ENDORSEMENT**

COURT FILE  
NO.:

CV-24-00717410-00CL

DATE: April 22, 2024

TITLE OF  
PROCEEDING:

*In the Matter of a Plan of Compromise or Arrangement of  
Antibe Therapeutics Inc.*

BEFORE: Justice Osborne

**PARTICIPANT INFORMATION**

**For Applicant:**

Name of Person Appearing	Name of Party	Contact Info
Ken Rosenberg	Counsel for Antibe Therapeutics Inc.	<a href="mailto:Ken.Rosenberg@paliareroland.com">Ken.Rosenberg@paliareroland.com</a>
Max Starnino		<a href="mailto:Max.Starnino@paliareroland.com">Max.Starnino@paliareroland.com</a>
Kartiga Thavaraj		<a href="mailto:Kartiga.Thavaraj@paliareroland.com">Kartiga.Thavaraj@paliareroland.com</a>
Evan Snyder		<a href="mailto:Evan.Snyder@paliareroland.com">Evan.Snyder@paliareroland.com</a>

**For Respondent:**

Name of Person Appearing	Name of Party	Contact Info
Lincoln Caylor	Counsel for Nuance Pharma Ltd.	<a href="mailto:caylorl@bennettjones.com">caylorl@bennettjones.com</a>
Alex Payne		<a href="mailto:paynea@bennettjones.com">paynea@bennettjones.com</a>
Sidney Brejak		<a href="mailto:brejaks@bennettjones.com">brejaks@bennettjones.com</a>
Jesse Mighton		<a href="mailto:mightonj@bennettjones.com">mightonj@bennettjones.com</a>

**For Other:**

Name of Person Appearing	Name of Party	Contact Info
Natalie Renner	Counsel for Knight Therapeutics	<a href="mailto:nrenner@dwpv.com">nrenner@dwpv.com</a>
Evan Cobb	Counsel for the Monitor (Deloitte Restructuring Inc.)	<a href="mailto:Evan.Cobb@nortonrosefulbright.com">Evan.Cobb@nortonrosefulbright.com</a>
Nigel Meakin	Representative of the Monitor (Deloitte Restructuring Inc.)	<a href="mailto:nmeakin@deloitte.ca">nmeakin@deloitte.ca</a>



## **ENDORSEMENT OF JUSTICE OSBORNE:**

1. This is the comeback hearing in this *CCAA* proceeding commenced by Antibe Therapeutics Inc. (“Antibe”), which has already had a tumultuous history in its short life.
2. At the conclusion of the hearing, I advised the parties that, pending the release of this Endorsement, the stay of proceedings granted by Justice Black on April 9, 2024 would remain in effect on an interim basis.

### **Background to the CCAA Application of Antibe and the Receivership Application of Nuance**

3. Much of the relevant background is set out in Justice Black’s endorsement of April 9, 2024. The matter came before the Court on that date originally scheduled as a case conference to schedule a hearing at the request of Nuance Pharma Ltd. (“Nuance”).
4. That case conference was scheduled in the context of an application that Nuance had commenced for the recognition and enforcement of an arbitral award it obtained against Antibe, and the appointment of a receiver over the assets of Antibe.
5. Nuance is a Hong Kong biopharmaceutical company. Antibe is an *OBCA* company, the shares of which traded, until trading was recently suspended, on the TSX Venture Exchange.
6. Nuance is the largest creditor of Antibe, and Antibe has no secured creditors.
7. Antibe is, and has been since 2004, working to develop and commercialize a drug known as Otenaproxesul (the “Drug”). The Drug is a non-steroidal anti-inflammatory (“NSAID”) said to have the potential to provide significant pain relief for various conditions such as osteoarthritis while avoiding or at least minimizing some of the side effects frequently associated with the use of NSAIDs, such as effects on the liver and gastrointestinal issues. As further described below, one of the issues is whether the Drug was and is intended for either or both of chronic and/or acute pain management.
8. Antibe entered into a licence agreement dated February 9, 2021 with Nuance pursuant to which, among other things, Nuance obtained exclusive licencing rights for the Drug in China, Hong Kong, Macau and Taiwan. Nuance paid an upfront licence fee of USD \$20 million.
9. On January 19, 2021, in the course of the regulatory approval process, Health Canada expressed serious concerns regarding the potential risk of liver-related adverse events related to the use (and particularly the extended use) of the Drug. Nuance alleged that these serious concerns were intentionally withheld from it by Antibe so as to amount to a fraudulent misrepresentation, upon which Nuance relied in entering into the licencing agreement and making the USD \$20 million prepayment. That payment was made by Nuance to Antibe in accordance with the licence agreement on February 19, 2021, one month after Health Canada expressed its concerns.
10. On July 30, 2021, a clinical trial being conducted in Canada by Antibe known as an AME Study (described below) was stopped for safety reasons as a result of the concerns expressed by Health Canada.
11. On September 5, 2021, Nuance formally advised Antibe that it was rescinding the licence agreement, and demanded the immediate return of the USD \$20 million. Antibe refused, with the result that Nuance filed a Notice of Arbitration (in accordance with the dispute arbitration provisions of the licence agreement) alleging the fraudulent misrepresentation and seeking rescission of the licence agreement.
12. The parties appointed an arbitral tribunal which rendered its final decision on February 27, 2024. The tribunal found, among other things, that:
  - a. Antibe and its Chief Executive Officer, Mr. Dan Legeault, made material misrepresentations and/or omissions leading up to the licence agreement;

- b. Antibe's response to due diligence inquiries by Nuance could "only be characterized as being so incomplete as to be affirmatively and deliberately misleading, evincing conscious mis-behaviour and recklessness, rather than an intent to be truthful or honest"; and
- c. "no amount of due diligence would have enabled [Nuance] to discover that Antibe had omitted/misled it with respect to key regulatory information";

all with the result that the arbitral tribunal determined that the licence agreement was validly rescinded by Nuance.

13. Antibe was ordered to "return to Nuance the sum of USD \$20 million that represented Nuance's upfront payment to Antibe, plus interest" together with costs.
14. Antibe still refused to return the funds, with the result that Nuance brought an application here in Ontario for the recognition and enforcement of the arbitral award, and sought the appearance before Justice Black referred to above to schedule the hearing of that application.
15. Nuance's application was issued on March 27, 2024. In addition to the recognition and enforcement of the arbitral award, Nuance sought an order restraining Antibe from selling or encumbering any assets, and an order appointing a receiver pursuant to section 101 of the *Courts of Justice Act*. The scheduling appointment was sought on notice to Antibe and was returnable on April 9, 2024 at 9:45 AM.
16. However, at 2:11 AM that morning (April 9), Antibe delivered an application record to commence a *CCAA* proceeding to seek protection from its creditors.
17. The result was that when the matter came on before Justice Black some seven hours later, both applications were sought to be returnable. The parties jointly advised the Court that they had had discussions which ultimately resulted in an agreement as to the terms of a consent order. Upon hearing the submissions of the parties, Justice Black was satisfied that the proposed order was appropriate, and granted an initial order in the *CCAA* proceeding, imposing, among other terms, an initial 10 day stay of proceedings on the terms set out in the order.
18. Later that day on April 9, 2024, the Canadian Investment Regulatory Organization issued a suspension in trading in the securities of Antibe.
19. In his endorsement released with the order, Justice Black observed that it would be important for Antibe to demonstrate on the comeback hearing that there was a realistic basis to expect that the Drug would be approved for use in the foreseeable future.
20. Nuance advised that it would be seeking the termination of the *CCAA* proceeding, and the appointment of a receiver as it had originally requested, at the comeback hearing.

### **The Relief Sought on this Comeback Hearing**

21. At this comeback hearing, Antibe seeks the following relief:
  - a. an extension of the stay of proceedings to and including May 24, 2024;
  - b. an increase in the quantum of the Administration Charge from \$250,000 - \$500,000; and
  - c. an increase in the Directors' Charge from \$150,000 - \$375,000.
22. Antibe relies on the Affidavit of its Chief Operating Officer, Scott Curtis ("Curtis"), affirmed on April 8, 2024, the Affidavit of Scott Curtis affirmed on April 17, 2024 and the Affidavit of Dr. Joseph Stauffer affirmed on April 16, 2024, each together with the respective exhibits thereto, as well as the First Report of the Monitor dated April 16, 2024. Antibe has also filed several letters of support from stakeholders.

23. Nuance opposes the relief sought by Antibe and by way of responding and cross application seeks an order:
- a. declaring that as of September 5, 2021 Antibe held USD \$20 million (the licence agreement prepayment) in trust for Nuance;
  - b. declaring that as of April 8, 2024, Antibe held CAD \$19.6 million (the amount of cash it had on hand as of that date) in trust for Nuance;
  - c. a tracing order in respect of the licence agreement prepayment and subsequent rescission; and
  - d. an order appointing a Receiver over the property of Antibe.
24. In the alternative, and if the Court grants the relief sought by Antibe extending and continuing the *CCAA* proceeding, Nuance seeks an order lifting the stay to allow it to seek the order originally sought in its application, recognizing and making enforceable the arbitral award as a judgment of this Court.
25. Nuance relies on the Affidavit of Mark Lotter, the Chief Executive Officer of Nuance, sworn April 15, 2024, together with exhibits thereto.

### **Clinical Development of the Drug - the FDA Hold and the Basis for the Requested Stay Extension**

26. The principal basis for the requested stay extension is to allow Antibe to receive an advisory letter from the US Food and Drug Administration (“FDA”), “so that it may consider its restructuring opportunities and options, in consultation with the Monitor and its stakeholders”.
27. That letter from the FDA is expected as a result of the fact that, on March 28, 2024, (one month after the date of the arbitral award and approximately two weeks before Nuance commenced its application), the FDA met with Antibe and verbally advised that it was placing a hold on Antibe’s pending Phase II trial in respect of the Drug.
28. The FDA advised that it would send, within 30 days, a letter that would contain more details of its reasons for the hold, in response to which Antibe would have an opportunity to provide further data and responses with a view to addressing the concerns of the FDA.
29. Unless and until the FDA hold is lifted, however, the Phase II trial cannot proceed. The Phase II trial is a step, albeit a significant one, on the road to regulatory approval and commercialization of Drug.
30. FDA drug approval typically has five stages:
- a. Stage 1 - discovery and development;
  - b. Stage 2 - preclinical research (laboratory and animal testing);
  - c. Stage 3 - clinical research (human testing, conducted in phases, to assess safety and efficacy);
  - d. Stage 4 - FDA review (of all data submitted, leading to a decision as to whether approve the relevant drug or not); and
  - e. Stage 5 - FDA post-market safety monitoring (undertaken while the drug is available for use by the public).
31. Stage 3 includes relatively standard Phases of clinical trials:
- a. Phase I - clinical trials involving a very limited patient population designed to find the highest dose of the drug that can be given safely without causing severe side effects and the best way to administer the proposed treatment;



- b. Phase II - clinical trials with a larger patient population in which patients are given the dose and method found to be the safest and most effective in Phase I (i.e., to evaluate the safety and efficacy of the drug); and
  - c. Phase III - clinical trials with a very large patient population (i.e., where the drug is given to a larger number of patients to confirm safety and efficacy).
32. Stage 5 often includes what are commonly referred to as Phase IV trials, in which patients taking the new drug or treatment are observed, often over a significant period of time, to evaluate the long-term effects of the drug or treatment and identify rare side effects or side effects that appear only after a patient has been taking the drug or treatment for a significant period of time.
33. It is the Phase II clinical trial in respect of the Drug that is on hold by the FDA here.
34. As described in the first Curtis Affidavit, a 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”).
35. According to the evidence of Antibe, between 2014 and 2021, while conducting its Phase I and Phase II studies on the Drug for chronic use, Antibe experienced clinically significant instances of LTEs after administration of the Drug during clinical trials. The latest of those trials involved an Absorption, Metabolism and Excretion study (the “AME Study”) conducted by Antibe in Canada and described above.
36. Antibe had filed a clinical trial application protocol for the AME Study with Health Canada in December, 2020. On January 19, 2021, Health Canada requested additional information, advising that it had serious concerns regarding the potential risk of liver-related adverse events.
37. Following a dialogue between Antibe and Health Canada that ensued, and the submission of additional data by Antibe, Health Canada advised that it could not issue a favourable decision on the clinical trial application protocol. Antibe then agreed with the suggestion of Health Canada that it withdraw its application, and later resubmitted it when it obtained additional study data requested, and when it had included suggested revisions.
38. Health Canada approved the AME Study in June 2021, and the study began the following month. Almost immediately, however, on July 30, 2021, the study (as expressed by Curtis) “hit the required stopping criteria and Antibe paused the study”.
39. Those “stopping criteria” were the result of revisions to the study protocol suggested by Health Canada that mandated a specified stop to the study if two patients exhibited LTEs at levels of five times the upper limit of normal. As set out in the first Curtis Affidavit, increases in LTEs greater than three times the upper limit of normal are clinically significant.
40. The AME Study was then resumed in September, 2021 and the report on the Study was finalized.
41. Ultimately, Antibe reviewed and analyzed the data and the AME Study results, and concluded that the LTEs only occurred in a given period after a certain exposure to the Drug, thus suggesting that a lower cumulative dose, if used for a shorter period, could be effective and safe.
42. As a result, Antibe “began to focus more exclusively on developing the Drug for acute pain relief”, as opposed to long-term or chronic pain relief. By Antibe’s own admission, it had been working since 2004 until 2021 on developing the Drug for chronic pain, but the biggest hurdle was this very issue of LTEs.

43. Over the last few years, and since what Antibe describes itself as its “pivot” to focusing on acute pain, the company has been working to determine that the issues causing the LTEs would not occur with the development of the Drug for acute use, particularly when used with specifically designed dosing regimens.
44. It was with a view to demonstrating this in a clinical setting that Antibe began undertaking the Phase II trial in the US in late 2023. It is that trial that was subjected to the FDA “hold” on March 28, 2024 that remains in effect today.
45. At this comeback hearing, Antibe’s efforts with respect to the Drug (and since development of the Drug is its business, its activities generally) are on hold or in a period of suspension until the concerns of the FDA are addressed and the “hold” is lifted.
46. According to Antibe itself, it “is not yet in a position to fully understand or respond to the FDA’s advice.” Antibe submits that it is prepared, if needed, to make adjustments to the Phase II trial design to provide sufficient comfort to the FDA, 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.
47. Also, according to Antibe, the regulatory process within the FDA “can be iterative, and at this juncture, Antibe does not know what a final design for the Phase II trial acceptable to the FDA will look like”. Curtis estimates that, using Antibe’s current Phase II trial design (and therefore assuming no significant changes mandated by the FDA), enrolment could be completed within three months, with final follow-up patient visits ending following the in-patient dosing.
48. Distilled down, the objective fact today is that the Phase II study is on hold, and Antibe does not know and will not know until it receives the particulars from the FDA, what lies ahead in terms of what protocol amendments are required to allow the Phase II trial to continue, and therefore what the timing and potential profitability of the Drug may look like going forward.
49. For these reasons, its position is effectively that the status quo should be maintained to “wait-and-see”, with the result that it seeks the stay extension to May 24 and the increases in the Directors’ Charge and the Administration Charge to ensure that the directors remain in office and that the professionals remain engaged so that the company is in a position to respond in a nimble and efficient way to whatever concerns the FDA may express.
50. Antibe also submits vigorously that, whether or not the CCAA proceeding is continued and whether or not a receiver is appointed, Nuance should not be entitled to the constructive trust relief it claims in respect of the prepayment made under the licence agreement, or in respect of the cash that Antibe has on hand. Antibe submits that those issues ought not to be determined on the basis of the limited record before the Court, and should be deferred to be determined on a full record, on notice to all affected parties, and once those parties have had an opportunity to assess their own positions.
51. Antibe is supported by Knight Therapeutics, who appeared on this motion both to support the continued CCAA proceeding, and particularly to argue that Nuance’s Trust claim should not be determined today. Knight submitted that it had just become aware of this matter, was assessing its own position and rights as a counterparty to a licencing agreement in respect of the Drug just like Nuance (albeit in a different geographic region), and may seek to take a position on the claims regarding trust property.
52. The Monitor supports the relief sought by the Applicant, and submits in the First Report that the stay of proceedings is necessary and justified in the circumstances.

### **CCAA or a Receivership: the Relevant Law and Application to this Matter**

53. Sections 11.02 (2) and (3) of the CCAA are clear: on an application other than an initial application, the Court may make a stay order for any period that the court considers necessary. However, the Court shall

not make the order unless the applicant satisfies the Court that circumstances exist that make the order appropriate; and the applicant has acted, and is acting, in good faith and with due diligence. The order is discretionary.

54. In the same way, the appointment of a receiver is discretionary. The test for the appointment of a receiver pursuant to section 101 of the *Courts of Justice Act* (“CJA”) is not in dispute. The Court may appoint a receiver where it appears just or convenient to do so.
55. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.
56. The Supreme Court of British Columbia, citing Bennett on Receivership, 2nd ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):
  - a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
  - b. the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
  - c. the nature of the property;
  - d. the apprehended or actual waste of the debtor’s assets;
  - e. the preservation and protection of the property pending judicial resolution;
  - f. the balance of convenience to the parties;
  - g. the fact that the creditor has a right to appointment under the loan documentation;
  - h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
  - i. the principle that the appointment of a receiver should be granted cautiously;
  - j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
  - k. the effect of the order upon the parties;
  - l. the conduct of the parties;
  - m. the length of time that a receiver may be in place;
  - n. the cost to the parties;
  - o. the likelihood of maximizing return to the parties; and
  - p. the goal of facilitating the duties of the receiver.

57. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: “these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as

to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).

58. It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29.
59. Accordingly, where, as here, there are competing applications for a continued insolvency proceeding under the *CCAA*, or the appointment of a receiver, the Court must consider all of the relevant factors in the exercise of its discretion to determine the most appropriate path forward.
60. At its most basic, Antibe seeks more time and concedes, as is apparent on the record, that it cannot really achieve much by way of designing or implementing a restructuring plan, until it knows the scope and breadth of the concerns of the FDA which are to be set out in the letter it expects to receive no later than April 28 (i.e., 30 days from the verbal advice received on March 28). It seeks a stay extension to May 24, in order to give itself an opportunity to digest the letter when received and respond to the FDA.
61. Antibe submits that since the stay extension it is seeking is for a period of approximately six weeks only, this Court ought not to disrupt the status quo with the appointment of a receiver. It submits that the proposed increases to each of the Administration Charge and the Directors' Charge are appropriate for the limited period of the proposed stay extension.
62. It further submits that Antibe's creditors would not be materially prejudiced by the proposed extension but could be prejudiced if the stay was not extended and Antibe was not able to utilize its resources to determine whether the FDA hold on the Phase II trial can be lifted and if so on what terms.
63. Nuance submits that Antibe is not proceeding in good faith, that it commenced the *CCAA* proceeding purely as a defensive tactic to avoid recognition and enforcement of the arbitral award in Ontario and that it is continuing to deplete funds that belong to Nuance.
64. Nuance submits that if the *CCAA* proceeding is permitted to continue, it is forced involuntarily into the role of a *de facto* DIP lender, albeit without the protections usually associated therewith. Nuance submits that there is no plan, or even the germ of a plan, present in this case.
65. Having considered all of the relevant factors and the submissions of the parties, I am not persuaded that it is appropriate to continue the *CCAA* proceeding in the particular circumstances of this case. In my view, it is just or convenient to appoint a receiver.
66. If this case represented a more typical example of competing applications for a continued *CCAA* proceeding and a receivership, I might have been of the view that a stay extension of some six weeks might be appropriate, in order to maintain the status quo and allow the parties to consider their respective positions. Without question, the filing for protection under the *CCAA* by Antibe was done defensively, just as Nuance alleges. But that alone is not determinative of the issue. There are examples of cases where protection under the *CCAA* has been granted in circumstances where protection was sought primarily to stay the enforcement of a claim or a judgment. The *CCAA* proceedings involving the Canadian tobacco manufacturers are such examples.
67. However, in my view, the particular circumstances of this case are unique, and I am not persuaded that the *CCAA* proceedings should continue.
68. The Drug at issue here is for all intents and purposes the entire business of Antibe. The evidence before the Court on these competing motions is clear (and the contrary is not seriously argued by Antibe) that the

success or failure of the company rests with approval and commercialization of the Drug. There is no other viable, let alone ongoing, material business or operations.

69. Second, the Drug is a long way from commercialization and the point at which it might generate operating profits for Antibe. This is not in and of itself the fault of the company, and nor as Antibe vigorously submits, is it unusual in the context of developing and commercializing pharmaceutical compounds. Extensive testing through clinical trials following research, with the attendant delays and hurdles, is part of the process.
70. The challenge here is that even if the stay extension until May 24 were granted, there is, in my view, no prospect whatsoever, let alone a reasonable prospect, of there being a plan, or even the germ of a plan within that proposed stay extension period. On the contrary, and in any event of what the FDA letter says (assuming it is received on or before April 28), a further stay extension, likely of a significant period of time, will be required.
71. One possibility is that the concerns expressed by the FDA that led to the existing and continuing hold on the Phase II trial can be addressed relatively quickly and without significant delay or additional cost, by Antibe. Even if this most optimistic possibility came to pass, however, the Phase II trial would continue, with all of the subsequent steps to be completed before the Drug came to market.
72. Antibe has equally been clear in its submissions that if this optimistic outcome in fact occurred, it would require a subsequent stay extension and would clearly require significant additional capital to continue the Phase II study and complete the various subsequent steps.
73. Antibe has approximately CAD \$19 million cash on hand. If the trust claims of Nuance succeed, it has no cash whatsoever. While the latter outcome would clearly be more dire for the company, and whether or not the trust claim succeeds, Antibe will require, by its own admission, very significant additional capital. That will have to be raised in the marketplace through debt or equity or both.
74. Antibe submits that it admittedly cannot raise capital now, but once it is armed with the ability to represent to the marketplace that it has addressed the concerns of the FDA such that the hold is lifted and the Phase II trial can continue, it will be much better positioned to have a reasonable chance of success in raising the necessary funds.
75. In my view, and while Antibe may be correct, the challenge is real and formidable. The first hurdle is the obvious one of satisfying the concerns of the FDA. I cannot make, and do not make, any determination in the disposition of these competing motions about what the likelihood of satisfying those concerns may be. That issue will be significantly better informed in the coming weeks when the FDA letter is received.
76. If the FDA letter is relatively favourable, it is likely that the ability to raise capital would be somewhat less challenging, and if the FDA letter raises significant hurdles to be overcome, or is overwhelmingly negative about proceeding with further clinical trials at all, the ability to raise capital will be very materially impaired.
77. In either event, however, the company is going to have to go into the marketplace in circumstances where, as submitted by Nuance, it faces the claim by Nuance arising from the arbitral award, as well as the specific factual findings made by the arbitral tribunal, some of which are summarized above at paragraph 12.
78. The arbitral award is final and binding. That was clear from the terms of the arbitration agreed to by the parties, and in any event, Antibe did not seek to appeal the award. On the contrary, it issued a public statement on March 4, 2024 to the effect that the award required “Antibe to refund the USD \$20 million upfront payment and pay interest and costs of approximately USD \$4 million”, and it further disclosed that Antibe “respects ... the final nature of the award and will accept the decision in good faith.”

79. Even if the *CCAA* stay were extended, Antibe still faces this liability (by far its largest). Moreover, and even if that stay is not lifted for the purpose of permitting Nuance to prosecute its recognition and enforcement proceeding, the liability remains and will be a factor taken into account by any potential investor or lender considering whether to commit capital to the company.
80. The challenges faced by Antibe in this regard are exacerbated by the nature of the findings made by the arbitral tribunal summarized above at paragraph 12 to the effect that the non-disclosure by Antibe to Nuance amounted to conduct that was “affirmatively and deliberately misleading, evincing conscious misbehaviour and recklessness, rather than an intent to be truthful or honest”, and that no amount of due diligence by Nuance would have enabled it to discover the omission with respect to the regulatory issues.
81. The challenge in raising new capital from an investor or lender is increased further by the fact that the nature of the misrepresentations found by the arbitral tribunal were not unique to the contractual relationship with Nuance, or otherwise unrelated to the core business of Antibe.
82. On the contrary, the findings were to the effect that the company, and particularly its Chief Executive Officer (who has not given any evidence on these motions), misled a significant licensee of the Drug that represents the core and only business of the company, as a result of which that licensee made an advance payment of USD \$20 million, as a result of all of which the arbitral tribunal found that the licensee (Nuance) is entitled to rescind its licence agreement.
83. These concerns about the ability of the company to raise capital are real, and none of them is fully answered, even by the most favourable of possible outcomes regarding the FDA hold letter.
84. Antibe submits that some of the concerns about the conduct of the Chief Executive Officer are mitigated by the fact that it has amended its governance structure to impose a management special committee comprised of three members, which committee exercises most of the CEO functions. I pause again to observe that Mr. Legeault remains one of the three members of that committee.
85. Nuance has, as a result of the above events, completely lost confidence in the management of Antibe. There are no secured creditors, and Nuance is the largest creditor of the company today.
86. Moreover, I do not accept the submission of Antibe that a termination of the *CCAA* proceeding and the appointment of a receiver necessarily represents a fatal blow to any possibility of a successful outcome, let alone a viable going-concern outcome.
87. A Court-appointed receiver owes obligations to the Court and to all stakeholders, notwithstanding that it may have been appointed at the request of one creditor or other stakeholder. As noted above, much in this case will depend upon the FDA letter to be received. However, a receiver is (and will be, in this case) capable of and tasked with the mandate of considering how best to proceed in the circumstances as they may evolve with a view to formulating a course of action to maximize recovery for all stakeholders.
88. Nuance submits on these motions that the “pivot” referred to above from extended use of the Drug for chronic pain relief to temporary acute pain management was significant, and that the commercial potential of the Drug lay in its enhanced efficacy and safety for extended use as compared to other NSAIDs in the marketplace.
89. Nuance also submits that the use of NSAIDs (such as the Drug) for acute pain management (where adverse effects on liver function are reduced because the Drug is administered for a shorter period of time) are not novel and that NSAIDs are “among the most common pain relief medicines in the world” (as was the evidence of Mr. Legeault quoted in the arbitral award).
90. I am not in a position to make any determination on those points and need not do so to dispose of these motions as I have done.

91. I do observe that the Drug is the only potentially marketable product that Antibe has, and that it remains in early stages of development. I am satisfied on the evidence in the record that even if the Phase II clinical trial proceeds, there remain significant hurdles to commercialization and that not only many, but indeed the majority of drug candidates fail at this stage of development. Even if the Phase II clinical trial is completed successfully, there are additional phases of clinical trials to be conducted (summarized above), followed by additional approvals required by regulatory authorities prior to the Drug ever being available in the market.
92. The formidable challenges of commercializing the Drug are illustrated by the fact that Antibe itself has already spent approximately CAD \$124 million and approximately 20 years on its development.
93. However, it is far from clear in my view on the record in this case that the market would react more negatively to an investment opportunity if a receiver were in place, than it would, given the facts that have already occurred (including the arbitral award) and the fact that even without a receivership, the company is in *CCAA* protection under the oversight of the Monitor.
94. I do not accept the submission of Nuance to the effect that if the *CCAA* process were continued, it would be an involuntary DIP lender, since such a submission presupposes the conclusion that the funds are in fact owned by Nuance and held in trust for its benefit by Antibe. That may ultimately be the case, but I am not prepared to make that determination today.
95. However, the objective fact is that there is no DIP lender or proposed DIP lender in the *CCAA* proceeding and nor is there even any candidate on the horizon. There is no evidence before me of there even being any discussions between Antibe and any possible source of DIP funding.
96. Here, Antibe did not seek to restructure as a result of the clinical concerns raised by Health Canada, or even as a result of the concerns raised by the FDA. Nor did it seek to restructure even when the arbitral award granting rescission was released. Rather, it waited to seek protection under the *CCAA* until 2 AM in the morning before the hearing of the case conference to schedule the already pending enforcement and recognition proceeding brought by Nuance. Antibe had already publicly disclosed to the market that it accepted “in good faith” the arbitral award, which is now final and binding. In the circumstances, all of the facts militate in favour of the application of a receiver: see *Callidus v. Carcap*, 2012 ONSC 163 at paras. 58 – 62, quoting with approval *Re Inducon Development Corp.*, [1992] O.J. No. 8 (Gen. Div.) where the court stated:

[57] The respondents ask, what is the harm in letting them reorganize? While that is an interesting question, it is not the test. It seems to me this is nothing more than a last ditch effort on the respondents’ part to stave off the inevitable. In *Re Marine Drive Properties Ltd.* the court put a similar situation this way: “to put in bluntly, the Petitioners have sought *CCAA* protection to buy time to continue their attempts to raise new funding ... they need time to ‘try to pull something out of the hat.’” Or, as Farley J. put it in *Re Inducon Development Corp.*, “... *CCAA* is designed to be remedial; it is not however designed to be preventative. *CCAA* should not be the last gasp of a dying company; it should be implemented if it is to be implemented, at a stage prior to the death throes.”

[58] Here, the respondents only brought their application after Callidus had brought its application for a receiver. The respondents knew in November that Callidus intended to seek a receiver. They waited until they had been served with the receivership application before launching their own effort to restructure. As a result, the cross-application for *CCAA* relief seems more a defensive tactic than a *bona fide* attempt to restructure. The respondents have no restructuring plan. They

have no outline of a plan. They do not have even a “germ of a plan”. Again, as the court said in *Inducon*:

[W]hile it is desirable to have a formalized plan when applying, it must be recognized as a practical matter that there may be many instances where only an outline is possible. I think it inappropriate, absent most unusual and rare circumstances, not to have a plan outline at a minimum, in which case then I would think that there would be requisite for the germ of a plan.

[59] The respondents have been attempting to refinance for some time. They have failed to meet every deadline for payment they agreed to with Callidus as well as with the TD Bank. Even when I delayed the date for the receivership order to take effect in order to give the respondents time to complete a refinancing, they were unable to do so.

[60] The absence of even a “germ of a plan” militates against granting relief under the *CCAA*.

[61] Finally, in considering the question of whether to grant relief under the *CCAA*, I must also look at the position of the two major secured creditors. Neither will support a plan of arrangement. They represent a considerable part of the respondents’ creditors. I have no evidence any other creditors would support a plan, either. I see no merit in making an initial order and imposing a stay in circumstances where a plan of arrangement is most likely going to be defeated.

[62] Having considered all these factors, I decline to grant relief under the *CCAA*.

97. Moreover, in my view, the objective should be to minimize the expenditure of funds pending receipt and consideration of the FDA letter. It is difficult to see why much should be done in the interim period until that occurs, beyond that which is reasonably necessary to ensure the continued viability of the Drug and the value of the intellectual property associated therewith, so that if the FDA concerns can be addressed, and addressed in a cost-effective and timely manner, the value of the Drug has not been lost. Both parties made submissions about the advantages and disadvantages of trying to maintain the company as a going concern, as opposed to, for example, the sale of an asset such as intellectual property. All of those issues are for another day.
98. At present, however, I am satisfied that the appointment of a receiver should minimize costs and the expenditure of financial resources in this interim period and is appropriate in the circumstances.
99. Perhaps most fundamentally, the inescapable fact is that Antibe has been found, in an arbitral award which is not only final and binding but which has been publicly accepted by Antibe, to have deliberately misled a licencing counterparty to a very significant agreement, as a result of which that counterparty advanced USD \$20 million and is now entitled to rescission of that agreement. In the circumstances, and considering all of the above factors, in my view, it is appropriate that a receiver be appointed.
100. Finally, I observe that, as discussed below, even if I had been persuaded that it was not just or convenient to appoint a receiver, and that the *CCAA* proceeding should continue, I would have granted leave to lift the stay of proceedings to permit Nuance to continue its application to recognize and enforce the arbitral award.
101. In such circumstances, the balance of convenience favours the granting of a receivership rather than a continuation of the *CCAA* proceedings, since to allow the *CCAA* proceedings to continue but then permit the Nuance application to proceed, would clearly be inefficient and likely result in additional time



and expense, which would not enure to the benefit of the stakeholders generally, or to the maximization of chances of recovery.

102. The proposed receiver has consented to act in that capacity and is qualified to do so.

103. The receiver is appointed effective immediately.

### **The Proposed Increases in the Administration Charge and the Directors' Charge**

104. Given my findings, it is unnecessary for me to consider the appropriateness of the proposed quantum increases in the Administration Charge and the Directors' Charge.

### **Nuance's Trust Claim**

105. Nuance seeks today a declaration that as of September 5, 2021 Antibe held the licence agreement prepayment of USD \$20 million in trust for its benefit, or in the alternative, a declaration that as of April 8, 2024 Antibe held the cash remaining on hand of CAD \$19.6 million in trust for its benefit.

106. At its core, Nuance's argument is to the effect that the trust arises by operation of law, as a result of the arbitral award granting rescission of the licence agreement. It submits that equity converts the holder of property that was acquired in circumstances where that holder does not retain a beneficial interest, into a trustee of that property for the beneficiary.

107. Nuance also submits that Antibe has been unjustly enriched by possession of the funds in question and, since there is no contract between the parties (which is the result of the rescission), there is no juristic basis on which Antibe can hold the funds.

108. Nuance submits that the arbitral award is final and binding (as acknowledged by Antibe) and that the trust, therefore, automatically arises.

109. In response, Antibe submits that, upon receipt of the licence agreement prepayment amount over which the trust is asserted, it lawfully and in the ordinary course co-mingled the funds with its own funds, including the proceeds of a capital raise in the market. The funds from Nuance were not required to be segregated and Antibe was entitled to use the funds for the continued commercialization of the Drug in the ordinary course, with the result that it should be permitted to continue to do so.

110. Antibe further submits that while Nuance sought the remedy of rescission (and obtained it) in the arbitration proceeding, it did not seek relief in the form of a declaration of trust which it now asserts, all with the result that such a claim is *res judicata*. Finally, it submits that the claim is barred by the expiry of the relevant limitation period.

111. I make no determination today about Nuance's claim that the funds are held in trust, without prejudice to Nuance pursuing that relief in the future. I do accept the position advanced by Antibe that the matter should be determined on the basis of a full record, and that, as submitted by Knight Therapeutics, there may be other parties who assert similar trust claims, and they should have an opportunity to consider their position.

112. In the circumstances, and particularly given my decision to appoint a receiver, in my view, the matter should not be decided today on a rushed basis. It follows that the arguments raised by Antibe that the nature of Nuance's claim make it a holder of equity, rather than a secured creditor, should also be determined another day.

113. As noted above, and had it been necessary to do so, I would have granted leave to lift the stay for the application of Nuance for the recognition and enforcement in Ontario of the arbitral award to be heard. Also as noted above, I do not accept today the argument of Nuance that it would be an involuntary DIP

lender for the reasons expressed above that such a finding presupposes the conclusion that it is entitled to the trust relief it seeks.

114. However, in my view, Nuance would be entitled to have that issue determined before a *CCAA* proceeding continued for a significant period of time, since if Nuance were successful in its trust claim, the result would indeed appear to be that the continued funding of Antibe would be effected through the use of its funds, absent any new DIP lender. Accordingly, the issue of whether the cash on hand at Antibe is held in trust for Nuance, ought to be determined before, for example, a *CCAA* process continued through to a conclusion.

115. In the circumstances of this case, and given the absence of any plan of Antibe (including but not limited to even any negotiations with the potential DIP lender, let alone a definitive agreement), the significant prejudice to Nuance of its enforcement application not proceeding, the fact that there are no secured creditors of Antibe, and the interests of justice generally, a lifting of the stay would have been appropriate: see *CanWest Global Communications Corp. (Re)*, 2009 CanLII 70508 (ONSC) at para. 33.

### **Result and Disposition**

116. For all of the above reasons, the *CCAA* proceeding is terminated and the receiver is appointed. I make no determination with respect to Nuance's trust claim.

117. Order to go to give effect to these reasons. Nuance should submit to me a draft order. The order is effective immediately and without the necessity of issuing and entering.

O'Leary, J.

## **APPENDIX “B”**

## APPENDIX "B"

Bloom Burton & Securities Inc. | May 24, 2024

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**Strictly Private and Confidential**

**FTI Consulting Canada Inc.**

TD South Tower  
79 Wellington Street West | Suite 2010  
P.O. Box 104  
Toronto, Ontario, M5K 1G8

Attention: Jim Robinson, Senior Managing Director

RE: Appointment as Financial Advisor to Maximize the Value of the Assets of Antibe Therapeutics Inc.

Bloom Burton Securities Inc. (“Bloom Burton” or “we”) understands that FTI Consulting Canada Inc. (“you” or “FTI”) has been appointed by Order of the Honourable Justice Osborne (Commercial List) as receiver and manager (the “Receiver”) of Antibe Therapeutics Inc. (“Antibe” or the “Company”). We further understand that the Receiver wishes to retain the services of Bloom Burton to act as a financial advisor to conduct a broad sale process that would see the assets of Antibe monetized for the benefit of its creditors (the “Transaction”). By your acceptance of this Engagement Letter (the “Engagement Letter” or the “Agreement”), the Receiver hereby appoints Bloom Burton to act as financial advisor in connection with the Transaction on the terms and subject to the conditions set out below. All dollar amounts in this Agreement are in Canadian dollars.

1. Services. Bloom Burton, with the engagement to be led by Jolyon Burton and supported by a team of investment bankers with specific and deep knowledge of Antibe’s intellectual property and plans, shall provide such financial advisory services at the direction of and as the Receiver may reasonably request in connection with the Transaction, including conducting the appropriate review and preparation of the solicitation materials, running the broad auction process, developing the outreach lists, launching and conducting the outreach, managing the tracking process, assisting in the due diligence process with interested parties, negotiating and soliciting expressions of interest, arranging and scheduling calls and meetings in support of the process, supporting the negotiation of definitive deal terms and agreements with the counterparty, and providing such other financial advisory services to you in connection with the Transaction as you and Bloom Burton agree, each acting reasonably, and are appropriate and customary in the circumstances. Bloom Burton will not provide any legal, tax or accounting advice, either pursuant to this Engagement Letter or otherwise. The Receiver will be solely responsible for engaging and instructing such legal, tax and accounting professionals as you and they deem necessary for the purposes of a Transaction.

In order to best co-ordinate efforts in this regard, you will promptly notify us of any approach by parties interested in having discussions with you in respect of a possible Transaction, and to the extent practicable, all discussions with prospective buyers will be initiated and carried on in conjunction with Bloom Burton,



but with the proviso that all information and updates with respect to the Transaction shall be provided to the Receiver in a timely manner.

2. Compensation. In consideration of providing our financial advisory services to you pursuant to this Agreement, the Receiver agrees to pay Bloom Burton a monthly cash fee equal to \$50,000 plus applicable taxes with the first monthly installment due and invoiced upon 30 days following the execution of the Engagement Letter and with each subsequent monthly cash fee being billed and due 30 days from the previous invoice.

3. Expenses. In addition to the fees set out above, whether or not a Transaction is completed, Bloom Burton will be entitled to reimbursement of reasonable out-of-pocket costs and expenses incurred in this matter on the Receiver's behalf, including photocopy, facsimile, printing, scanning and binding expenses, telephone and search charges, mail and delivery expenses and other incidental expenses. Any travel, lodging and meal expenses, governmental filing or legal services fees, are to be approved by the Receiver in advance. Bloom Burton will provide the Receiver with detailed statements of these costs and expenses. If significant disbursements are to be incurred, such as retaining the services of a third party and other agents, Bloom Burton will obtain prior written consent from the Receiver. Taxes on professional fees as well as on costs and expenses may be applicable and will be added to the invoices.

4. Information. The Receiver will furnish to Bloom Burton such information as Bloom Burton reasonably requests in connection with the performance of its services hereunder. The Receiver understands, acknowledges and agrees that, in performing its services hereunder, Bloom Burton will use and rely entirely upon such information, as well as any publicly available information regarding Antibe, or the Transaction and that Bloom Burton does not assume responsibility for independent verification of the accuracy or completeness of any information, whether publicly available or otherwise furnished to it, concerning the Company, or the Transaction, including, without limitation, any financial information, forecasts or projections considered by Bloom Burton in connection with the provision of its services. Accordingly, Bloom Burton shall be entitled to assume and rely upon the accuracy and completeness of all such information and shall not be required to conduct a physical inspection of any of the properties or assets or to prepare or obtain any independent evaluation or appraisal of any of the assets or liabilities of the Company. If any information provided to Bloom Burton by the Receiver or the Company becomes inaccurate, incomplete or misleading in any material respect during our engagement hereunder, or if you become aware of any material changes, actual or contemplated, in your affairs or in any material information provided to us concerning you or the Transaction, you shall promptly advise us.

5. Term and Termination. The initial term of this Engagement shall end on the earlier of the closing of the Transaction or September 30, 2024, or such other date as may be mutually agreed upon provided that either the Receiver or Bloom Burton may terminate this Agreement at any time upon ten (10) days written notice to the other party (the "Termination Date"). Upon termination of this Agreement, the Company shall pay to Bloom Burton, within thirty (30) calendar days of receipt by the Company of an invoice from Bloom Burton, all fees earned to the Termination Date on a pro-rata basis as applicable, and all out-of-pocket expenses incurred pursuant to this Agreement through the Termination Date as provided for in paragraphs 1, 2 and 3 above. The Company's obligations, representations and warranties herein will survive the completion of Bloom Burton's engagement hereunder, any withdrawal or termination of or decision not to proceed with the Transaction or the expiry or other termination or purported termination of this Agreement.

6. Use of Advice. Other than as expressly provided herein and unless such disclosure is required by applicable law or the policies, rules or requirements of securities regulatory authorities, you acknowledge and agree that all written and oral opinions, advice, analysis and materials provided by Bloom Burton in connection with our engagement hereunder are intended solely for the benefit and for internal use by the Receiver in considering the Transaction and you covenant and agree that no such opinion, advice or material

shall be used for any other purpose whatsoever or reproduced, disseminated, quoted from or referred to in whole or in part at any time, in any manner or for any purpose, without our prior written consent in each specific instance not to be unreasonably withheld. Any advice or opinions given by Bloom Burton hereunder will be made subject to and will be based upon such assumptions, limitations, qualifications and reservations as we, in our sole judgment, deem necessary or prudent in the circumstances. Bloom Burton expressly disclaims any liability or responsibility by reason of any unauthorized use, publication, distribution of or reference to any oral or written opinions or advice or materials provided by us or any unauthorized reference to Bloom Burton or this engagement.


7. Miscellaneous. This Engagement Letter shall not be assigned by either party without the prior written consent of the other party; provided however, that in the event of a sale or other transaction in which the Company is not the surviving corporation or entity, the Company's remaining obligations, if any, under this Engagement Letter shall remain in full force and effect and become obligations of the surviving corporation or entity. This Engagement Letter shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without reference to principles of conflicts of law. The parties hereby expressly and irrevocably agree and consent that any action, suit or proceeding arising out of or relating to this Engagement Letter will be submitted to the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario, which is overseeing the receivership proceedings of the Company. This Engagement Letter constitutes the entire agreement between Bloom Burton and the Company with respect to the subject matter hereof and supersedes all prior agreements, oral or written. If any provision of this Engagement Letter is determined to be invalid or unenforceable in any respect, such determination will not affect such provision in any other respect, and the remainder of the Engagement Letter shall remain in full force and effect. No modifications of this Engagement Letter or waiver of any term or condition hereof will be binding upon you or us, unless agreed to in writing by each of us. Time will be of the essence of this Agreement.

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If the foregoing correctly sets forth our understanding, please so indicate by executing this Engagement Letter and returning the signed original for our files. This Agreement supersedes any prior agreements between the Receiver and Bloom Burton with respect to the subject matter hereof. The executed Engagement Letter can also be delivered by facsimile transmission and/or by email in PDF format and if so delivered shall be deemed to be an original document.

Yours truly,

**BLOOM BURTON SECURITIES INC.**

Per:   
\_\_\_\_\_  
Jolyon Burton  
President & Head of Investment Banking

**Acknowledgement and Acceptance**

**To: BLOOM BURTON SECURITIES INC.**

Accepted and agreed by FTI Consulting Canada Inc. solely in its capacity as court-appointed receiver and manager of Antibe Therapeutics Inc., and not in its personal or corporate capacity.

Dated this 27<sup>th</sup> day of May, 2024

**FTI CONSULTING CANADA INC.,**

Solely in its capacity as court-appointed receiver and manager of Antibe Therapeutics Inc., and not in its personal or corporate capacity

By:



Jim Robinson  
Senior Managing Director



## **APPENDIX “C”**

Sale Process

ANTIBE THERAPEUTICS INC.

**Introduction**

1. On April 9, 2024, Antibe Therapeutics Inc. (“**Antibe**” or the “**Debtor**”) made an application pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for creditor protection (the “**CCAA Proceedings**”). On the same day, the Court granted an Initial Order which, among other things: (i) granted a stay of proceedings up to and including April 18, 2024; and (ii) appointed Deloitte Restructuring Inc. as Court-appointed monitor of the business and financial affairs of Antibe (in such capacity, the “**Monitor**”).
2. On April 15, 2024, Nuance Pharma Ltd. (“**Nuance**”), responded with a cross-application objecting to the CCAA proceedings.
3. On April 22, 2024, the Honourable Justice Osborne issued an endorsement appointing FTI Consulting Canada Inc. as receiver and manager (the “**Receiver**”), without security, of the assets, undertakings and properties of Antibe Therapeutics Inc. (“**Antibe**” or the “**Debtor**”). The appointment was confirmed to be effective pursuant to an order of the Court issued on April 30, 2024 (the “**Receivership Order**”).
4. On June 24, 2024, pursuant to an order (the “**Sale Process Order**”) of the Court, the Receiver was, among other things, authorized to continue solicitation efforts and conduct a sale process in respect of the assets of the Debtor (the “**Sale Process**”). Pursuant to the Sale Process Order, the Receiver has engaged and the Court has appointed Bloom Burton Securities Inc. (the “**Financial Advisor**”) to conduct the Sale Process described herein with direct oversight of the Receiver.

**Opportunity**

5. The Sale Process is intended to solicit interest in opportunities for a sale of all or part of the Debtor’s assets (the “**Opportunity**”). The Opportunity may include one or more sales of all or substantially all of the Debtor’s assets (the “**Property**”) (each, a “**Transaction**”).
6. This document describes the sale process (the “**Sale Process**”) by which the Property will solicited, including the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a “**Person**”) may gain access to, or continue to have access to, due diligence materials concerning the Debtor and the Property, how bids will be submitted to and dealt with by the Receiver, and how Court approval will be obtained in respect of a Transaction.
7. The Sale Process contemplates a two-stage process that requires parties to submit letters of interest by the Phase 1 Bid Deadline and binding offers by the Phase 2 Bid Deadline (as defined below).

8. Except to the extent otherwise set forth in a definitive sale agreement with a successful bidder, any Transaction will be on an “asis, where-is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, the Debtor, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Debtor in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.
9. In the Sale Process, (i) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Toronto, Ontario. If any deadline date referred to in the Sale Process falls on a day that is not a Business Day, then such date shall be extended until the next Business Day; and (ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase, “without limitation”.

**Timeline**

10. The following table sets out the key milestones under the Sale Process:

<b>Milestone</b>	<b>Timeline</b>	<b>Targeted Deadline</b>
Commencement date		<b>June 11, 2024</b>
Preparation of Sale Process materials:  (i) Teaser, Buyer list, NDA	<b>Completed</b>	<b>June 11, 2024</b>
(ii) Investment Memorandum, Buyer list, Notices for trade publication, NDA, populate EDR	<b>10 days</b>	<b>June 21, 2024</b>
Phase 1 Bid Deadline	<b>50 days</b>	<b>July 31, 2024</b>
Assessment of Phase 1 Bids	<b>9 days</b>	<b>August 9, 2024</b>
Phase 2 Bid Deadline	<b>25 days</b>	<b>September 3, 2024</b>
Auction Date (if applicable)	<b>7 days</b>	<b>September 11, 2024</b>
Finalize Transaction agreement	<b>7 days</b>	<b>September 11, 2024</b>
Sale Approval Motion (as defined below) in Court	<b>As soon as reasonably practicable</b>	<b>September 20, 2024 (outside date)</b>
Closing of the Transaction	<b>As soon as reasonably practicable</b>	<b>September 27, 2024 (outside date)</b>

11. The dates set out in the Sale Process may be extended by either: (i) further order of the Court; or (ii) the Receiver.

**Solicitation of Interest: Notice of the Sale Process**

12. The Financial Advisor, with the oversight and assistance from the Receiver and input from the senior management of Antibe, prepared a list of potential bidders, including (i) parties

that operate in a similar industry, and (ii) local and international strategic and financial parties who may be interested in a Transaction pursuant to the Sale Process (collectively, “**Known Potential Bidders**”). The Financial Advisor with oversight from the Receiver also prepared a short-form teaser that provided an overview of the opportunity (the “**Teaser**”). On June 11, 2024, the Receiver and Financial Advisor commenced solicitation efforts to the Known Potential Bidders and sent the Teaser either electronically or by physical mail depending on the recipient.

13. The Receiver’s legal counsel, Thornton Grout Finnigan LLP, also prepared a form of non-disclosure agreement (an “**NDA**”) to be utilized by interested parties to access confidential information.
14. As soon as reasonably practicable, the Receiver with the assistance of the Financial Advisor and its legal counsel, Thornton Group Finnigan LLP, as required will:
  - a. arrange for a notice of the Sale Process (and such other relevant information which the Receiver considers appropriate) (the “**Notice**”) to be published in in *The Globe and Mail* (National Edition), *Insolvency Insider*, the Receiver’s website, and any other newspaper or journal or industry website as the Receiver considers appropriate, if any; and
  - b. prepare a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the Court-approved Sale Process, and inviting recipients of the Teaser and Teaser Letter to express their interest pursuant to the Sale Process.
15. The Receiver and the Financial Advisor will send the Teaser, Teaser Letter and NDA to each Known Potential Bidder and to any other Person who requests a copy of the Teaser Letter and NDA or who is identified to the Receiver as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

### **Potential Bidders and Due Diligence Materials**

16. Any party who wishes to participate in the Sale Process (a “**Potential Bidder**”) must provide an executed NDA to the Receiver, and which shall inure to the benefit of any purchaser of the Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
17. The Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered an NDA to the Receiver and provided information as to their financial ability, in the Receiver’s sole discretion, to close a transaction, such access to due diligence material and information relating to the Property as the Receiver deems appropriate. Due diligence shall include access to an electronic data room (“**EDR**”) containing information about the Debtor and the Opportunity, and may also include management presentations, confidential information memorandums, on-site inspections, and other matters which a Potential Bidder may reasonably request and as to which the Receiver may agree. The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders

and the manner in which such requests must be communicated. The Receiver will not be obligated to furnish any information relating to the Property to any person other than to Potential Bidders. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Sale Process, the Opportunity or the Property.

18. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property in connection with their participation in the Sale Process and any Transaction they enter into.

### **Phase 1: Non-Binding LOI**

19. Potential Bidders that wish to submit a bid to purchase the Property (a “**Phase 1 Bidder**”) shall submit a non-binding letter of intent (an “**LOI**”) that complies with all of the following requirements to the Receiver’s counsel at the address specified in Schedule “1” hereto (including by e-mail), so as to be received by them not later than **1:00 PM (EST) on July 31, 2024** (the “**Phase 1 Bid Deadline**”) or as may be modified in the Bid process letter that may be circulated by the Receiver to Potential Bidders (each LOI that meets the requirements set out below, a “**Qualified Phase 1 Bid**”):

- a. the LOI must be duly executed by all required parties;
- b. the LOI must be received by the Phase 1 Bid Deadline;
- c. the LOI identifies the Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Phase 1 Bidder for all purposes regarding the contemplated transaction;
- d. the LOI clearly indicates the Property, either in part or all or substantially all, that the Phase 1 Bidder is seeking to acquire;
- e. the LOI contains such other information as may be reasonably requested by the Receiver;
- f. the LOI identifies the following:
  - i. the proposed purchase price in Canadian dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Phase 1 Bidder and key assumptions supporting the valuation;
  - ii. a description of the Property that is expected to be subject to and included in the transaction, and any of the Property expected to be excluded from the transaction;
  - iii. a specific indication of the financial capability of the Phase 1 Bidder and the expected structure and financing of the transaction;

- iv. a description of the conditions and approvals required to complete the closing of the transaction;
- v. a description of those liabilities and obligations (including operating liabilities) which the Phase 1 Bidder intends to assume and which such liabilities and obligations it does not intend to assume, if any; and
- vi. any other terms or conditions of the LOI that the Phase 1 Bidder believes are material to the transaction.

20. The Receiver may waive strict compliance with any one or more of the requirements above.

### **Evaluation of Competing Phase 1 Bids**

- 21. The Receiver and the Financial Advisor may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Satisfactory Bid (as defined below).
- 22. Following the Phase 1 Bid Deadline, the Receiver and the Financial Advisor will determine the LOIs that are selected as the most favourable Phase 1 Qualified Bids, which will then be deemed “**Phase 1 Satisfactory Bids**”.
- 23. Phase 1 Bidders whose LOIs are selected as Phase 1 Satisfactory Bidders will be determined as being Phase 2 Qualified Bidders. The Receiver will notify each Phase 1 Bidder in writing as to whether it was determined to be a Phase 2 Qualified Bidder no later than five (5) business days following the Phase 1 Bid Deadline, or at such later time as the Receiver, in consultation with Financial Advisor, deems appropriate, acting reasonably.

### **Phase 2: Formal Binding Offers**

- 24. Phase 2 Qualified Bidders that wish to make a formal offer to purchase the Property shall submit a binding offer (a “**Bid**”) that complies with all of the following requirements to the Receiver’s counsel at the address specified in Schedule “1” hereto (including by e-mail), so as to be received by them not later than **1:00 PM (EST) on September 3, 2024** or as may be modified in the Bid process letter that may be circulated by the Receiver or Financial Advisor to Phase 2 Qualified Bidders (the “**Phase 2 Bid Deadline**”):
  - a. the Bid must be a binding offer to acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”);
  - b. the Bid (either individually or in combination with other bids that make up one bid) is an offer to purchase the Property and is consistent with any necessary terms and conditions established by the Receiver and communicated to Phase 2 Qualified Bidders;

- c. the Bid includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- d. the Bid includes duly authorized and executed transaction agreements, which provide:
  - i. the purchase price (the "**Purchase Price**") for the Sale Proposal;
  - ii. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - iii. a description of the conditions and approvals required to complete the closing of the transaction;
  - iv. a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
  - v. any other terms or conditions of the Bid that the Bid Phase 2 Qualified Bidder believes are material to the transaction; and
  - vi. any and all exhibits and schedules thereto;
- e. the Bid is accompanied by a deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Receiver), in an amount equal to ten percent (10%) of the Purchase Price, to be held and dealt with in accordance with this Sale Process;
- f. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Receiver to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities, and general wherewithal to consummate the proposed transaction;
- g. the Bid is not conditioned on (i) the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, or (ii) obtaining financing. Any conditions and approvals required to complete the Sale Proposal will be included in the transaction documents;
- h. the Bid fully discloses the identity of each entity that will be entering into the transaction, or that is otherwise participating or benefiting from such bid;
- i. the Bid includes acknowledgements and representations of the Phase 2 Qualified Bidder that the Phase 2 Qualified Bidder:
  - i. is completing the Transaction on an "as-is, where-is" basis;

- ii. has had an opportunity to conduct any and all due diligence regarding the Property and the Debtor prior to making its Bid;
  - iii. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
  - iv. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the Debtor or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
- j. the Bid is received by the Phase 2 Bid Deadline; and
  - k. the Bid contemplates closing the Transaction set out therein in an expedient manner following the granting of an order by the Court approving the same.
25. Following the Bid Deadline, the Receiver and the Financial Advisor will assess the Bids received. The Receiver, in consultation with the Financial Advisor, will designate the most competitive bids that comply with the foregoing requirements to be “**Phase 2 Qualified Bids**”. No Bids received shall be deemed not to be Phase 2 Qualified Bids without the approval of the Receiver. Only Phase 2 Qualified Bidders whose bids have been designated as Phase 2 Qualified Bids are eligible to become the Successful Bidder(s).
26. The Receiver may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bids to be a Phase 2 Qualified Bid. The Receiver will be under no obligation to negotiate identical terms with, or extend identical terms to, each Bidder.
27. The Receiver shall notify each Bidder in writing as to whether its Bid constituted a Phase 2 Qualified Bid within two (2) business days of the Phase 2 Bid Deadline, or at such later time as the Receiver deems appropriate.
28. The Receiver may aggregate separate Bids from unaffiliated Phase 2 Qualified Bidders to create one Phase 2 Qualified Bid.

### **Evaluation of Competing Bids**

29. A Phase 2 Qualified Bid will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the net value provided by such bid, (ii) the identity, circumstances and ability of the Bidder to successfully complete such Transaction(s), (iii) the proposed Transaction documents, (iv) the assets included or excluded from the bid, (v) any related restructuring costs, (vi) the likelihood and timing of consummating such Transaction, each as determined by the Receiver and (vii) any other factor deemed relevant by the Receiver.
30. The Receiver reserves the right to negotiate with any bidder with respect to their Phase 2 Qualified Bid if the Receiver determines such negotiations to be in the best interest of the Sale Process.



## **Auction**

31. If the Receiver receives at least two Phase 2 Qualified Bids and determines, in consultation with the Financial Advisor, that they are competitive, the Receiver may proceed to conduct and administer an Auction in accordance with the terms of this Sale Process (the “**Auction**”). Instructions to participate in the Auction, which will take place via video conferencing, or in person, as determined by the Receiver, and will be provided to Qualified Parties (as defined below) not less than 48 hours prior to the Auction.
32. Only parties that provided a Phase 2 Qualified Bid by the Phase 2 Bid Deadline, as confirmed by the Receiver (collectively, the “**Qualified Parties**”), shall be eligible to participate in any Auction. No later than 1:00 p.m. (EST) on the day prior to any Auction, each Qualified Party must inform the Receiver whether it intends to participate in the Auction. The Receiver will promptly thereafter will have the option to inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction.

## **Auction Procedure**

33. If the Receiver is to conduct an Auction, the Auction shall be governed by the following procedures:
  - a. **Participation at the Auction.** Only the Qualified Parties, the Receiver and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Receiver shall provide the selected Qualified Parties with the details of the lead bid by 1:00 PM (EST) no later than five (5) days after the Phase 2 Bid Deadline. Each Phase 2 Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 1:00 PM (EST) on the Business Day prior to the Auction;
  - b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid;
  - c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Receiver, in consultation with the **Financial** Advisor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Receiver’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of \$100,000;
  - d. **Bidding Disclosure.** The Auction shall be conducted such that all bids may be made and received in one group video-conference or otherwise, on an open basis, and all Qualified Parties may be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party may be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully

- disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Receiver, in its discretion, may establish separate video conference rooms to permit interim discussions between the Receiver and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each **participating** Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s);
  - f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has **concluded**; and
  - g. **Auction Procedures.** The Receiver shall be at liberty to revise those rules set out herein or **set** additional procedural rules prior to or at the Auction as it sees fit.

### **Selection of Successful Bid**

34. If the Receiver elects to conduct an Auction, before the conclusion of the Auction, the Receiver will:
- a. review and evaluate each Qualified Bid, considering the factors set out in paragraph 28 and any other factor that the Receiver may reasonably deem relevant, provided that each Qualified Bid may be negotiated among the Receiver, the Financial Advisor and the Qualified Bidder, and may be amended, modified or varied to improve such Qualified Bid as a result of such negotiations; and
  - b. identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
35. The Receiver reserves the right to select a Successful Bid without the requirement to perform an Auction if, in the Receiver’s opinion, an Auction will not lead to a better bid as part of the Sale Process.
36. The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the Receiver, subject to the milestones set forth in paragraph 10.

### **Sale Approval Motion Hearing**

37. At the hearing of the motion to approve any transaction with a Successful Party (the “**Sale Approval Motion**”), the Receiver shall seek, among other things, approval from the Court to consummate any Successful Bid. All Qualified Bids other than the Successful Bid, if any, shall be deemed to be rejected by the Receiver on and as of the date of approval of the Successful Bid by the Court.

## **Confidentiality and Access to Information**

38. All discussions regarding a Bid should be directed through the Receiver and the Financial Advisor. Under no circumstances should the former management of the Debtor be contacted directly without the prior consent of the Receiver or the Financial Advisor. Any such unauthorized contact or communication could result in the exclusion of the interested party from the Sale Process.
39. Participants and prospective participants in the Sale Process shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bids, the details of any Bids submitted or the details of any confidential discussions or correspondence between the Receiver and such other bidders or Potential Bidders in connection with the Sale Process, except to the extent the Receiver, with the consent of the applicable participants, seeks to combine separate bids from Qualified Bidders.

## **Supervision of the Sale Process**

40. The Receiver shall oversee, and the Financial Advisor shall conduct, the Sale Process in all respects, and, without limitation to that supervisory role, the Receiver will participate in the Sale Process in the manner set out in this Sale Process and the Sale Process Order and any other orders of the Court and is entitled to receive all information in relation to the Sale Process.
41. This Sale Process does not and will not be interpreted to create any contractual or other legal relationship between the Receiver and any Potential Bidder, any Qualified Bidder or any other Person, other than as specifically set forth in a definitive agreement that may be entered into with the Receiver.
42. Without limiting the preceding paragraph, the Receiver and the Financial Advisor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Bidder, the Successful Bidder, the Debtor, or any other creditor or other stakeholder of the Debtor, for any act or omission related to the process contemplated by this Sale Process Procedure, except to the extent such act or omission is the result from gross negligence or willful misconduct of the Receiver or the Financial Advisor. By submitting a bid, each Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver or the Financial Advisor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or willful misconduct of the Receiver or the Financial Advisor.
43. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.
44. The Receiver shall have the right to modify the Sale Process (including, without limitation, pursuant to the Bid process letter) if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the Sale Process; provided that the Service List in these proceedings shall be advised of any substantive modification to the procedures set forth herein.

## **Deposits**

45. All Deposits received pursuant to this Sale Process shall be held in trust by the Receiver. The Receiver shall hold Deposits paid by each of the Bidders in accordance with the terms outlined in this Sale Process. In the event that a Deposit is paid pursuant to this Sale Process and the Receiver elects not to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such Deposit, the Receiver shall return the Deposit to that Person. In the event that the Successful Bidder defaults in the payment or performance of any obligations owed to the Receiver pursuant to any Final Agreement, the Deposit paid by the Successful Bidder, as applicable, shall be forfeited as liquidated damages and not as a penalty.

**Schedule “1”**

**Address of Receiver**

**To the Receiver:**

**FTI Consulting Canada Inc.**

TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attention: Jim Robinson and Jonathan Joffe

Email: [jim.robinson@fticonsulting.com](mailto:jim.robinson@fticonsulting.com)  
[jonathan.joffe@fticonsulting.com](mailto:jonathan.joffe@fticonsulting.com)

with a copy to:

**Thornton Grout Finnigan LLP**

Suite 3200, 100 Wellington Street West  
P.O. Box 329, Toronto-Dominion Centre  
Toronto, Ontario M5K 1K7

Attention: Rebecca Kennedy

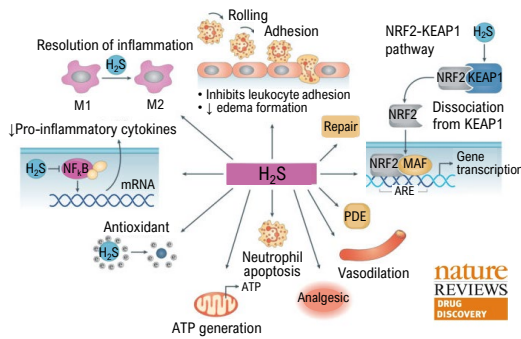
Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

## **APPENDIX “D”**

Opportunity to acquire a novel, pre-Phase 2 clinical-stage, anti-inflammatory analgesic without the limitations of opioids and NSAIDs, addressing a critical unmet need for effective acute pain management

## H<sub>2</sub>S PLATFORM: BROAD THERAPEUTIC POTENTIAL

- 1 Anti-Inflammatory
- 2 Cytoprotective
- 3 Analgesic



## INTRODUCTION

Pursuant to an order issued by the Ontario Superior Court of Justice (Commercial List), FTI Consulting Canada Inc. was appointed receiver and manager of the assets, undertakings and properties of Antibe, effective April 22, 2024. Bloom Burton has been retained by the Receiver as the exclusive financial advisor on the sale of Antibe's assets either en bloc or in parts, including all intellectual property for its lead asset, ATB-346 (otenaproxesul).

ATB-346 is currently on clinical hold; however, the company has developed a plan to fully address the FDA's concerns and proceed into Phase 2 development for acute pain.

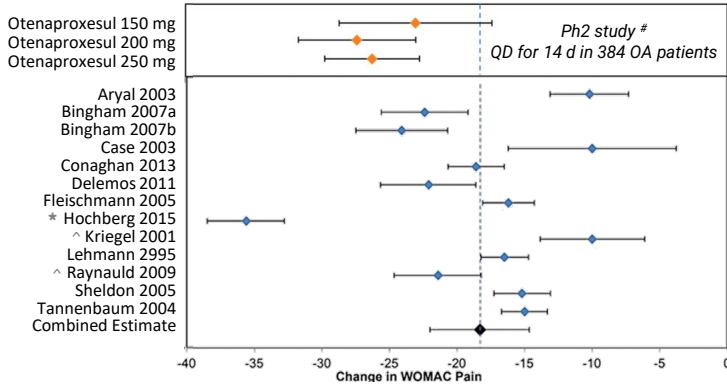
## ROBUST PAIN RELIEF

### Robust efficacy compared to historical NSAID trials in OA pain

Sig. superior efficacy vs. placebo at 200 mg ( $p=0.007$ ) and 250 mg ( $p=0.01$ )

Summary of Adjusted Mean Change in WOMAC Pain Score Reduction of Otenaproxesul and Historical Studies of NSAIDs (mITT Population)

(Further to the left indicates greater pain relief)



OA, osteoarthritis; QD, once daily; BID, twice daily  
 \*Not placebo-controlled; ^ Trials with naproxen; Kriegel 2001 (BID, 250 mg and 500 mg); Raynaud 2009 (500 mg BID); \*Data for the original crystalline formulation

## ATB-346 DEVELOPMENT OVERVIEW

Crystalline Formulation	Amorphous Formulation
Chronic pain	Acute pain

- Strong safety and efficacy Ph2 data
- Transient liver signal with chronic dosing in 5-12% of individuals
- Plausible liver injury mechanism identified
- New, fast-absorbing formulation and dosing regimen avoids injury pathway
- Clinically proven to be liver safe; no liver signal observed in Phase 1

### Strategic Pivot to Acute Pain

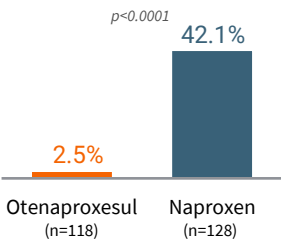
Phase 2 safety and efficacy in abdominoplasty study planned

## ATB-346 HIGHLIGHTS

- Human POC established in chronic pain with best-in-class safety profile
- 8,000+ person-days on drug in 700+ subjects across multiple clinical studies
- Developed new formulation and dosing regimen to avoid the identified mechanism of liver injury and for rapid onset in acute pain; Ph1 demonstrated liver safe
- Granted COM patent for ATB-346 in all major markets (exp. 2027+); additional formulation, process, and platform patents filed (exp. 2042-2045)

## SUPERIOR GI SAFETY

Incidence of GI ulcers (≥3 mm diameter)



### 16:1 GI safety superiority to naproxen

Phase 2b double-blind study in 244 healthy volunteers

- Subjects received either 250 mg of otenaproxesul once daily or 550 mg of naproxen twice daily\*

\*Doses administered represent the therapeutic dose of otenaproxesul and the standard prescription dose of naproxen for treating OA pain (data for the original crystalline formulation).

## CONTACT

**Jolyon Burton**  
 Head of Investment Banking  
 jburton@bloomburton.com  
 (647) 328-7134

**Claudia Hui**  
 Vice President  
 chui@bloomburton.com  
 (416) 454-6688

**David Philpott**  
 Analyst  
 dphilpott@bloomburton.com  
 (647) 501-7946

## OPPORTUNITY DRIVERS

- Novel MOA:** H<sub>2</sub>S-releasing NSAID provides a safer, more effective solution for pain and inflammation
- Robust Pain Relief:** Proven superior to placebo in Phase 2b study for osteoarthritis pain (n=384)
- High Unmet Need:** Addresses the demand for safer non-opioid alternatives
- Blockbuster Potential:** Building on Vertex's efforts in raising awareness for the acute pain market with its novel analgesic, suzetrigine (VX-548), projected to reach \$1.5B in peak sales despite its slow-onset
- Platform Versatility:** H<sub>2</sub>S offers broad therapeutic potential across a range of diseases and indications

## **APPENDIX “E”**



**APPENDIX "E"**

Court File No.: CV-24-00719237-00CL

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

THE HONOURABLE

)

MONDAY, THE 24<sup>th</sup>

JUSTICE OSBORNE

)

DAY OF JUNE, 2024

)

**B E T W E E N:**

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE  
COURTS OF JUSTICE ACT**

**CLAIMS PROCEDURE ORDER**

**THIS MOTION**, made by FTI Consulting Canada Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") without security, of all of the present and future assets, undertakings and real and personal property of Antibe Therapeutics Inc. ("**Antibe**"), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the Receiver dated June 18, 2024, the First Report of the Receiver dated June 18, 2024 (including the appendices thereto, the "**First Report**"), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the Service List, as appears from the affidavit of service, sworn and filed,

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**DEFINITIONS AND INTERPRETATION**

2. **THIS COURT ORDERS** that capitalized terms used in this Order shall have the meanings ascribed to them in Schedule “A” to this Order.
3. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day, unless otherwise indicated herein.
4. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”.
5. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

**GENERAL PROVISIONS**

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to use its reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion and execution of such forms, or request any further documentation from a Person that the Receiver may require in order to enable the Receiver to determine the validity or quantum of a Claim.
7. **THIS COURT ORDERS** that if any Claim arose in a currency other than Canadian Dollars, then the Person making the Claim shall complete its Proof of Claim and indicate the amount of the Claim in such currency, rather than in Canadian Dollars or any other currency. Where no currency is indicated, the Claim shall be presumed to be in Canadian

Dollars. The Receiver shall subsequently calculate the amount of such Claim in Canadian Dollars, using the Bank of Canada Canadian Dollar Daily Exchange Rate on April 22, 2024.

8. **THIS COURT ORDERS** that the form and substance of each of the Notice to Claimants, Proof of Claim, Notice of Revision or Disallowance and Dispute Notice, substantially in the forms attached as Schedules “B”, “C”, “D” and “E”, respectively, to this Order are hereby approved. Notwithstanding the foregoing, the Receiver may from time to time make changes to such forms as the Receiver considers necessary or advisable.

### **RECEIVER’S ROLE**

9. **THIS COURT ORDERS** that the Receiver, in addition to its prescribed rights, duties, responsibilities and obligations under the Receivership Order, shall take all actions and fulfill any other roles as are authorized by this Order or incidental thereto, including the determination of Claims and referral of any Claim to the Court.
10. **THIS COURT ORDERS** that the Receiver may attempt to resolve the classification and amount of any Claim with the Claimant on a consensual basis prior to accepting, revising or disallowing such Claim.
11. **THIS COURT ORDERS** that: (i) in carrying out the terms of this Order, the Receiver shall have all of the protections given to it by the Receivership Order and this Order, (ii) the Receiver shall incur no liability or obligation as a result of carrying out the provisions of this Order, except for claims for gross negligence or wilful misconduct, (iii) the Receiver shall be entitled to rely on the books and records of Antibe, all without further independent investigation, and (iv) the Receiver shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information or in any information provided by any Claimant, except for claims for gross negligence or wilful misconduct.

## NOTICE TO CLAIMANTS

12. **THIS COURT ORDERS** that:

- (a) the Receiver shall, no later than five (5) Business Days following the date granting this Order, post a copy of this Order, the Notice to Claimants, a blank proof of claim form, and an instruction letter (the “**Claims Package**”) on the Receiver’s Website at: <http://cfcanada.fticonsulting.com/antibe/>;
- (b) as soon as practicable after the granting of this Order, the Receiver shall, for one business day, publish the Notice to Claimants in the *Globe and Mail* (National Edition); and
- (c) the Receiver shall deliver, as soon as reasonably practicable following a request, a Claims Package to any Person claiming to be a creditor of Antibe, provided such request is received before the Claims Bar Date.

13. **THIS COURT ORDERS** that, except as specifically provided for in this Order, the Receiver is not under any obligation to provide notice of this Order to any Person having or asserting a Claim, and all Persons shall be bound by the Claims Bar Date, this Order, and any notices published pursuant to paragraphs 12(a) and (b) of this Order, regardless of whether or not they received actual notice, and any steps taken in respect of any Claim, in accordance with this Order.

14. **THIS COURT ORDERS** that neither: (i) the reference to a purported Claim as a “Claim” or a purported Claimant as a “Claimant” in this Order, nor (ii) the delivery of a Proof of Claim by the Receiver to a Person, shall constitute an admission by the Receiver or Antibe of any obligation of Antibe to any Person.

## PROOFS OF CLAIM

15. **THIS COURT ORDERS** that every Person with a Claim shall file with the Receiver by email, prepaid ordinary mail, courier, personal delivery, or telefax on or before the Claims Bar Date, a Proof of Claim together with any supporting documentation.

**CLAIMS BAR DATE**

16. **THIS COURT ORDERS** that, subject to further order of this Court, any Person who does not deliver a Proof of Claim, together with supporting documentation, on or before the Claims Bar Date: (a) shall be and is hereby forever barred from making or enforcing such Claim, and all such Claims shall be forever extinguished, (b) shall not be entitled to receive any distribution pursuant to the Claims Process or further Order of this Court, and (c) shall not be entitled to any further notice in the Claims Process, and shall not be entitled to participate as a Claimant in respect of such Claim.
17. **THIS COURT ORDERS** that, subject to further order of the Court, the Claims Bar Date shall be 1:00 p.m. (Toronto time) on August 30, 2024.
18. **THIS COURT ORDERS** that each Person required by this Order to file a Proof of Claim shall include any and all Claims it asserts against Antibe in a single Proof of Claim.

**DETERMINATION OF CLAIMS**

19. **THIS COURT ORDERS** that, subject to the terms of this Order, the Receiver shall review all Proof of Claims filed on or before the Claims Bar Date and may accept, revise, or disallow (in whole or in part) the amount, or any other aspect of, a Claim asserted in a Proof of Claim. At any time, the Receiver may: (i) request additional information with respect to any Claim, (ii) request that the Claimant file a revised Proof of Claim, (iii) attempt to consensually resolve the amount or any other aspect of a Claim, or (iv) admit, revise, or disallow a Claim.
20. **THIS COURT ORDERS** that where a Claim is revised or disallowed pursuant to paragraph 19 of this Order, the Receiver shall deliver to the Claimant a Notice of Revision or Disallowance and attach the form of Dispute Notice.
21. **THIS COURT ORDERS** that where a Claim has been accepted or admitted by the Receiver, such Claim shall constitute a Proven Claim for the purposes of the Claims Process. The acceptance of any Claim or other determination of same in accordance with this Order, in whole or in part, shall not constitute an admission of any fact, thing,

obligation, or quantum of any Claim by any Person, save and except in the context of the Claims Process.

### **DISPUTE NOTICE**

22. **THIS COURT ORDERS** that a Claimant who intends to dispute a Notice of Revision or Disallowance shall deliver a Dispute Notice to the Receiver so that it is received by the Receiver no later than fourteen (14) calendar days after such Claimant is deemed to have received the Notice of Revision or Disallowance in accordance with paragraph 30 of this Order, or such longer period as may be agreed to by the Receiver in writing. The receipt of a Dispute Notice by the Receiver within the fourteen (14) calendar day period specified in this paragraph shall constitute an application to have the amount of such Claim determined pursuant to the claims process provided for in this Order.
23. **THIS COURT ORDERS** that where a Claimant fails to deliver a Dispute Notice in accordance with paragraph 22 of this Order, the amount of such Claimant's Claim shall be deemed to be as set out in the Notice of Revision or Disallowance. Such amount, if any, shall constitute such Claimant's Proven Claim, and the balance of such Claimant's Claim, if any, shall be forever barred and extinguished.
24. **THIS COURT ORDERS** that where a Claim has been revised or disallowed pursuant to paragraph 20 of this Order, the revised or disallowed Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the process set out in this Order or as otherwise ordered by the Court.

### **RESOLUTION OF CLAIMS**

25. **THIS COURT ORDERS** that as soon as practicable after a Dispute Notice is received by the Receiver in accordance with this Order, the Receiver may attempt to resolve and settle a disputed Claim with the Claimant.
26. **THIS COURT ORDERS** that in the event that the Receiver is unable to consensually resolve any Dispute Notices within a reasonable time period, the Receiver shall either: (i) file a report with the Court summarizing such Dispute Notices and shall bring a motion for

advice and directions from the Court in respect of the resolution of the outstanding Dispute Notices; or (ii) refer the matter to a Claims Officer to adjudicate a Disputed Claim.

### **CLAIMS OFFICER(S)**

27. **THIS COURT ORDERS** that the selection of any Claims Officer to adjudicate a Disputed Claim shall be subject to mutual agreement between the affected Claimant and the Receiver and if such agreement is not possible, Court approval. The Receiver is hereby authorized to bring a motion to seek an order of the Court appointing a Claims Officer in respect of any and all disputed Claims. The Receiver shall pay the reasonable professional fees and disbursements of each Claims Officer on presentation and acceptance of invoices from time to time.
28. **THIS COURT ORDERS** that, subject to further order of the Court, the Claims Officer shall determine the Status and/or amount of each Disputed Claim and in doing so, the Claims Officer shall be empowered to determine the process in which evidence may be brought before him or her as well as any other procedural matters which may arise in respect of the determination of any Claim. In addition, the Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before the Claims Officer shall be paid.
29. **THIS COURT ORDERS** that the Receiver or the Claimant may appeal the Claims Officer's determination to this Court by serving upon the other (with a copy to the Receiver) and filing with this Court, within ten (10) calendar days of notification of the Claims Officer's determination of such Disputed Claim, a notice of motion returnable on a date to be fixed by this Court. If a notice of motion is not filed within such period, then the Claims Officer's determination shall be deemed to be final and binding.

### **NOTICE OF TRANSFEREES**

30. **THIS COURT ORDERS** that the Receiver shall not be obligated to send notice to or otherwise deal with a transferee or assignee of a Claim as the Claimant in respect thereof unless and until: (i) actual written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the

Receiver, and (ii) the Receiver has acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for all purposes hereof constitute the “Claimant” in respect of such Claim. Any such transferee or assignee of a Claim, and such Claim, shall be bound by all notices given or steps taken in respect of such Claim, in accordance with this Order prior to the written acknowledgement by the Receiver of such transfer or assignment.

31. **THIS COURT ORDERS** that if the holder of a Claim has transferred or assigned the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim, and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment, and the Receiver shall not be bound to acknowledge or recognize any such transfer or assignment and shall be entitled to send notice to and to otherwise deal with such Claim only as a whole, and then only to and with the Person last holding such Claim in whole as the Claimant in respect of such Claim. Provided that a transfer or assignment of the Claim has taken place in accordance with this Order and the Receiver has acknowledged in writing such transfer or assignment, the Person last holding such Claim in whole as the Claimant in respect of such Claim may by notice to the Receiver, in writing, direct that subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and, in such event, such Claimant, transferee or assignee of the Claim shall be bound by any notices given or steps taken in respect of such Claim by or with respect to such Person in accordance with this Order.

#### **DIRECTIONS**

32. **THIS COURT ORDERS** that the Receiver or any other Person with an economic interest in this Claims Process may at any time, and with such notice as the Court may require, seek directions from the Court with respect to this Order and the claims process set out herein, including the forms attached as Schedules hereto.



**SERVICE AND NOTICE**

33. **THIS COURT ORDERS** that the Receiver may, unless otherwise specified by this Order, serve and deliver the Claims Package, and any letters, notices or other documents to Claimants, or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to such Persons (with copies to their counsel, if applicable) at the last address shown in the books and records of Antibe or set out in such Person's Proof of Claim. Any such service or notice by courier, personal delivery or electronic or digital transmission shall be deemed to have been received: (i) if sent by ordinary mail, on the third (3rd) Business Day after mailing within Ontario, the fifth (5th) Business Day after mailing within Canada (other than within Ontario), and the tenth (10th) Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by electronic or digital transmission by 5:00 p.m. on a Business Day, on such Business Day, and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day. Notwithstanding anything to the contrary in this Order, Notices of Revision or Disallowance shall be sent only by (i) electronic or digital transmission to a fax number or email address that has been provided in writing by the Claimant or (ii) courier.
34. **THIS COURT ORDERS** that any notice or other communication (including Proofs of Claim and Dispute Notices) to be given under this Order by any Person to the Receiver shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid registered mail, courier, personal delivery or electronic or digital transmission addressed to:

**FTI Consulting Canada Inc.**  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attn: Jim Robinson and Jonathan Joffe  
Email: [antibe@fticonsulting.com](mailto:antibe@fticonsulting.com)

Any such notice or other communication by a Person shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day, or if delivered outside of a normal business hours, the next Business Day.

35. **THIS COURT ORDERS** that if during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further Order of the Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or electronic or digital transmission in accordance with this Order.

#### **MISCELLANEOUS**

36. **THIS COURT ORDERS** that notwithstanding any other provision of this Order, the solicitation of Proofs of Claim, and the filing by a Person of any Proof of Claim, shall not, for that reason only, grant any Person any standing in the Receivership Proceedings or rights to a distribution.
37. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.
38. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
-

**SCHEDULE “A”  
DEFINED TERMS**

- (a) **“Business Day”** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario, Canada;
- (b) **“Claim”** means any right or claim of any Person that may be asserted or made in whole or in part against Antibe, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever (including any claim by a Director or Officer against the Applicant for contribution and/or indemnity arising from any Directors or Officers Claim (**“D&O Claim”**) relating to the time period prior to the Filing Date), and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including, without limitation, any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, including, without limiting the foregoing, any right or claim of a current or former employee of Antibe, unionized or non-unionized, or any tax claim;
- (c) **“Claims Process”** means the procedures outlined in this Order, including the Schedules to this Order;

- (d) “**Claims Bar Date**” means 1:00 p.m. (Toronto time) on **August 30, 2024**, or such later date as the Court may order or the Receiver may determine under the authority of this Order;
- (e) “**Claims Officer**” means one or more individuals selected or appointed in accordance with this Claims Process Order to act as a claims officer for the purposes of this Claims Process Order;
- (f) “**Claimant**” means any Person asserting a Claim, and includes the transferee or assignee of a Claim, transferred and recognized as a Claimant in accordance with paragraphs 26 to 27 hereof, or a trustee, executor, or other Person acting on behalf of or through such Person;
- (g) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (h) “**Disputed Claim**” means a Claim that is validly disputed in accordance with this Claims Process Order and which remains subject to adjudication in accordance with this Claims Process Order;
- (i) “**Dispute Notice**” means a written notice delivered to the Receiver by a Person who has received a Notice of Revision or Disallowance of that Person’s intention to dispute such Notice of Revision or Disallowance and the reasons for the dispute, substantially in the form attached as Schedule “**E**” hereto;
- (j) “**Filing Date**” means the date on which an application for the Receivership was made and effective pursuant to the Receivership Order.
- (k) “**Notice of Revision or Disallowance**” means a notice informing a Claimant that the Receiver has revised or disallowed all or part of such Claimant’s Claim set out in such Claimant’s Proof of Claim, substantially in the form attached as Schedule “**D**” hereto;
- (l) “**Person**” is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership,

association, trust, unincorporated organization, joint venture, government authority or any agency, regulatory body, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity;

- (m) **“Proof of Claim”** means the proof of claim to be completed and filed by a Person setting forth a Claim and which shall include all supporting documentation in respect of such Claim, substantially in the form attached as Schedule “C” hereto;
- (n) **“Proven Claim”** means the amount of a Claimant’s Claim, as finally determined under the Claims Process;
- (o) **“Receivership Order”** means the order of the Honourable Justice Osborne dated April 30, 2024, appointing the Receiver and granting the Receiver certain powers effective retroactively as of April 22, 2024;
- (p) **“Receivership Proceedings”** means the proceedings commenced pursuant to the Receivership Order on application by Nuance Pharma Ltd.;

**SCHEDULE “B”  
NOTICE TO CLAIMANTS**

Court File No.: CV-24-00719237-00CL

BETWEEN:

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**RE: NOTICE OF CLAIMS PROCESS**

**PLEASE TAKE NOTICE** that this notice is being published pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) made June [24], 2024 (the “**Claims Process Order**”). If you believe you are a creditor of Antibe, please continue reading this notice.

A Claims Process has been commenced pursuant to the Claims Process Order. All creditors of Antibe are required to submit a Proof of Claim to FTI Consulting Canada Inc., the Court-appointed receiver and manager of Antibe (in such capacity, the “**Receiver**”) on or before **August 30, 2024**.

Creditors may obtain the Claims Process Order and a Claims Package from the Receiver’s website at <http://cfcanada.fticonsulting.com/antibe/> or by contacting the Receiver by email at [antibe@fticonsulting.com](mailto:antibe@fticonsulting.com).

If you are a creditor of Antibe and wish to assert a claim, you are required to submit a completed Proof of Claim to the Receiver by **1:00 p.m. (Toronto Time) on August 30, 2024** (the “**Claims Bar Date**”). It is your responsibility to complete the appropriate documents and ensure that the Receiver receives your completed documents by the Claims Bar Date.

**CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE FOREVER BARRED AND EXTINGUISHED.**

DATED at Toronto this \_\_\_\_ day of \_\_\_\_\_, 2024.

**SCHEDULE "C"  
PROOF OF CLAIM**

Court File No.: CV-24-00719237-00CL

BETWEEN:

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

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**PROOF OF CLAIM**

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**1. PARTICULARS OF CLAIMANT**

- (a) Full Legal Name of Claimant: \_\_\_\_\_
- (b) Full Mailing Address of Claimant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (c) Telephone Number of Claimant: \_\_\_\_\_
- (d) Facsimile Number of Claimant: \_\_\_\_\_
- (e) E-mail Address of Claimant: \_\_\_\_\_
- (f) Attention (Contact Person): \_\_\_\_\_

**2. PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED THE CLAIM, IF APPLICABLE:**

Have you acquired this Claim by assignment?      Yes            No     

(if yes, attach documents evidencing assignment)

Full Legal Name of original creditor(s): \_\_\_\_\_

**3. PROOF OF CLAIM**

**THE UNDERSIGNED CERTIFIES AS FOLLOWS:**

That I [am a Claimant/hold the position of \_\_\_\_\_ of the Claimant][*select applicable*] and have knowledge of all the circumstances connected with the Claim described herein;

That I have knowledge of all of the circumstances connected with the Claim described herein and set out below;

\_\_\_\_\_ [Insert Respondent Name] was and is still indebted to the Claimant as follows:

*(Any Claims denominated in a foreign currency shall be filed in such currency and will be converted to Canadian Dollars at rates set out in the Claims Process Order.)*

	<b>Amount of Claim</b>
1.	\$
2.	\$
3.	\$
4.	\$
<b>TOTAL</b>	<b>\$</b>



#### 4. NATURE OF CLAIM

**(CHECK AND COMPLETE APPROPRIATE CATEGORY)**

- Total Unsecured Claim of \$ \_\_\_\_\_
- Total Secured Claim of \$ \_\_\_\_\_
- Total Proprietary Claim of \$ \_\_\_\_\_
- Total D&O Claim of \$ \_\_\_\_\_

In respect of this debt, I hold security over the assets of \_\_\_\_\_ [Insert Respondent Name] valued at \$ \_\_\_\_\_ [List the amount of security], the particulars of which security and value are attached to this Proof of Claim form.

*(If the Claim is secured, provide full particulars of the security, including the date on which the security was given the value for which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security.)*

#### 5. PARTICULARS OF CLAIM:

The particulars of the undersigned's total Claim are attached.

*(Provide full particulars of the Claim(s) and supporting documentation, including the amount, description of transaction(s) or agreement(s) giving rise to the Claim(s), name of any guarantor(s) which has guaranteed the Claim(s), and amount of Claim(s) allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed.*

#### 6. FILING OF CLAIM

**This Proof of Claim must be returned to and received by the Receiver by 1:00 p.m. (Toronto Time) on the Claims Bar Date (August 30, 2024).**

In each case, completed forms must be delivered by prepaid registered mail, courier,

personal delivery, facsimile transmission or email to the Receiver at the following address:

**FTI Consulting Canada Inc.**

79 Wellington Street West

Suite 2010, P.O. Box 104

Toronto, Ontario M5K 1G8

Attn: Jim Robinson and Jonathan Joffe

Email: [antibe@fticonsulting.com](mailto:antibe@fticonsulting.com)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**SCHEDULE “D”  
NOTICE OF REVISION OR DISALLOWANCE OF CLAIM**

Court File No.: CV-24-00719237-00CL

BETWEEN:

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

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**NOTICE OF REVISION OR DISALLOWANCE**

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TO:

The Receiver has reviewed your Proof of Claim dated \_\_\_\_\_, 2024, and has revised or rejected your Claim in respect of \_\_\_\_\_ for the following reasons:

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Subject to further dispute by you in accordance with the provisions of the Claims Process Order, your Claim will be allowed as follows:

<b>Original Claim Amount</b>	<b>Disallowed Amount</b>	<b>Revised Allowed Amount</b>
\$	\$	\$
\$	\$	\$
\$	\$	\$

If you intend to dispute this Notice of Revision or Disallowance, you must notify the Receiver of such intent by delivery to the Receiver of a Dispute Notice in accordance with the Claims Process Order, such that it is received by the Receiver by 1:00 p.m. no later than fourteen (14) calendar days after you receive such Notice of Revision or Disallowance at the following address by prepaid registered mail, courier, personal delivery, facsimile transmission or email:

**FTI Consulting Canada Inc.**

TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attn: Jim Robinson and Jonathan Joffe  
Email: [antibe@fticonsulting.com](mailto:antibe@fticonsulting.com)

If you do not deliver a Dispute Notice in accordance with the Claims Process Order, the value of your Claim(s) shall be deemed to be as set out in this Notice of Revision or Disallowance.

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**SCHEDULE "E"  
DISPUTE NOTICE**

Court File No.: CV-24-00719237-00CL

BETWEEN:

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

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**DISPUTE NOTICE**

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**1. PARTICULARS OF CLAIMANT**

(g) Full Legal Name of Claimant: \_\_\_\_\_

(h) Full Mailing Address of Claimant: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(i) Telephone Number of Claimant: \_\_\_\_\_

(j) Facsimile Number of Claimant: \_\_\_\_\_

(k) E-mail Address of Claimant: \_\_\_\_\_

(l) Attention (Contact Person): \_\_\_\_\_

**2. PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED  
THE CLAIM, IF APPLICABLE:**

- (m) Have you acquired this Claim by assignment?      Yes            No        
 (if yes, attach documents evidencing assignment)

Full Legal Name of original creditor(s): \_\_\_\_\_

**3. DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM:**

*(Any Claims denominated in a foreign currency shall be filed in such currency and will be converted to Canadian dollars at the rate set out in the Claims Procedure Order.)*

We hereby disagree with the value of our Claim as set out in the Notice of Revision or Disallowance dated \_\_\_\_\_, as set out below:

<b>Claim as Allowed or Revised per Notice of Revision or Disallowance</b>	<b>Claim per Claimant</b>
\$	\$
\$	\$
<b>Total</b>	\$

*(Insert particulars of Claim per Notice of Revision or Disallowance, and the value of your Claim as asserted by the Claimant.)*

**4. REASONS FOR DISPUTE:**

*(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. The particulars provided must support the value of the Claim, as stated by you in item 2 above.*

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If you intend to dispute the Notice of Revision or Disallowance, you must notify the Receiver of such intent by delivery to the Receiver of this Dispute Notice in accordance with the Claims Process Order such that it is received by the Receiver by 1:00 p.m. no later than fourteen (14) calendar days after you receive such Notice of Revision or Disallowance at the following address by prepaid registered mail, courier, personal delivery, facsimile transmission or email:

**FTI Consulting Canada Inc.**  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attn: Jim Robinson and Jonathan Joffe  
Email: [antibe@fticonsulting.com](mailto:antibe@fticonsulting.com)

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT***

**NUANCE PHARMA LTD.**

Applicant AND

**ANTIBE THERAPEUTICS INC.**  
Respondent

Court File No.: CV-24-00719237-00CL

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

Proceedings commenced at Toronto

**CLAIMS PROCEDURE ORDER**

**Thornton Grout Finnigan LLP**

Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON M5K 1K7

**Rebecca L. Kennedy (LSO# 61146S)**

Email: rkennedy@tgf.ca

**Ines Ferreira (LSO # 81472A)**

Email: [iferreira@tgf.ca](mailto:iferreira@tgf.ca)

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Receiver,  
FTI Consulting Canada Inc.



## **APPENDIX “F”**

**APPENDIX "F"**

Court File No.: CV-24-00719237-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101  
OF THE *COURTS OF JUSTICE ACT***

**AFFIDAVIT OF JIM ROBINSON  
(Sworn June 18, 2024)**

I, **JIM ROBINSON**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Senior Managing Director with FTI Consulting Canada Inc. in its capacity as Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Antibe Therapeutics Inc. and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.
2. Attached hereto as **Exhibit “A”** to this my affidavit are copies of the redacted invoices setting out the fees and disbursements of the Receiver for the period from April 22, 2024 to May 31, 2024 (the “**Fee Approval Period**”), totalling \$249,366.57, including disbursements of \$389.37 and HST in the amount of \$28,688.20.
3. Attached hereto as **Exhibit “B”** to this my affidavit is a schedule summarizing the invoices and the total billable hours charged.

4. Attached hereto as **Exhibit “C”** to this my affidavit is a schedule summarizing the respective billing rates of the Receiver’s professionals during the Fee Approval Period.

5. To the best of my knowledge, the rates charged by FTI throughout the course of these proceedings are comparable to the rates charged by other accounting firms in the relevant comparable markets for the provision of similar services, and are comparable to the hourly rates charged by FTI for services rendered in relation to similar proceedings.

6. The hours spent on this matter and disbursements incurred by the Receiver are outlined in detail in Exhibits “A”, “B” and “C”, and I believe were reasonable and appropriate in the circumstances.

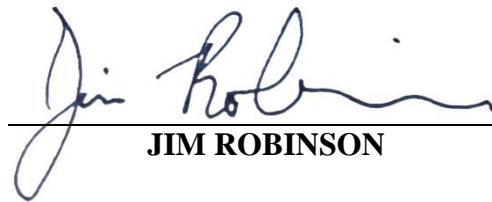
7. This affidavit is sworn in connection with a motion for, *inter alia*, approval of the Receiver’s fees and disbursements, and for no other or improper purpose.

SWORN remotely via videoconference, by  
JIM ROBINSON stated as being located in the  
City of Toronto, in the Province of Ontario,  
before me at the City of Toronto, in the Province  
of Ontario, this 18th day of June, 2024, in  
accordance with O. Reg 431/20, *Administering  
Oath or Declaration Remotely*



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Commissioner for Taking Affidavits, etc  
INES FERREIRA



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**JIM ROBINSON**

This is Exhibit "A" referred to in the  
Affidavit of Jim Robinson sworn by Jim Robinson at the City  
of Toronto, in the Province of Ontario, before me  
this 18th day of June, 2024 in accordance with  
*O. Reg. 431/20, Administering Oath or Declaration Remotely.*



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A Commissioner for taking affidavits

**INES FERREIRA**



**Invoice Summary**

Antibe Therapeutics Inc.  
15 Prince Arthur Avenue  
Toronto, ON M5R 1B2  
Canada

Invoice No. **102900001168**  
Job No. **500001.2878**  
Terms **Due Upon Receipt**  
Currency **CAD**  
Tax Registration:

**RE: Receivership**

**Current Invoice Period: Charges posted through April 28, 2024**

<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Jonathan Joffe	Senior Director	\$920.00	15.20	\$13,984.00
Zoe Lin	Consultant	\$420.00	7.40	\$3,108.00
Caitlin Moreland	Administrative Professional	\$155.00	2.00	\$310.00
<b>Total Professional Services</b>			<b>24.60</b>	<b>\$17,402.00</b>
<b>Expenses</b>				<b>Total</b>
Parking				\$22.12
<b>Total Expenses</b>				<b>\$22.12</b>
<b>Invoice Total</b>				<b>CAD Amount</b>
				\$17,424.12
HST (13%)				\$2,265.14
<b>Total Due</b>				<b>\$19,689.26</b>



**Invoice Detail**

**Invoice No.** May 03, 2024  
**Job No.** 102900001168  
500001.2878

**Total Professional Services**  
**Jonathan Joffe**

04/22/2024	Review endorsement of Justice Osborne; correspond with D. Legault and S. Curtis; correspond internally with J. Robinson and Z. Lin; draft letter to RBC and reviewing comments from Thornton Grout Finnigan LLP regarding same; review draft Receivership order; attend introductory call with D. Legault and S. Curtis; and draft internal update for J. Robinson regarding same.	3.40
04/23/2024	Correspond with D. Legault and S. Curtis; respond to D. Legault's resignation from the board of directors; review audit notice regarding payroll deductions and corresponding with S. Curtis regarding same; [REDACTED]; review draft CCAA Termination order; correspond internally with J. Robinson and Z. Lin; attend call with S. Curtis regarding wages and benefits; review draft letter to Industrial Alliance Private Wealth.	3.80
04/24/2024	Review the Company's draft press release, correspond with J. Robinson and Thornton Grout Finnigan LLP, and responding to S. Curtis regarding same; correspond with J. Robinson and Thornton Grout Finnigan LLP regarding further board resignations; review creditor list and send update to J. Robinson regarding same; correspond with Z. Lin regarding new receivership estate bank accounts and related authorizations, including an account for segregated funds; review further drafts of the receivership order and the CCAA termination order; review and format creditor listing for the notice to be mailed to creditors.	2.90
04/25/2024	Correspond with and attend call with J. Stauffer, Chief Medical Officer; correspond with the Company's landlord; correspond with S. Curtis; correspond with J. Robinson regarding case website.	1.50



**Invoice Detail**

**Invoice No.** May 03, 2024  
**Job No.** 102900001168  
 500001.2878

04/26/2024	Correspond with Z. Lin regarding website updates; correspond with D. Legault regarding receipt of FDA letter and circulating copy of same to J. Robinson; correspond with J. Robinson and R. Kennedy regarding payroll processing timing and related matters; respond to shareholder inquiry; correspond with D. Legault, S. Curtis and P. Stern regarding visit to the Company's premises; attend at the company's premises, draft receivership communication reference materials; draft notice to creditors; meet with P. Stern and take photo and video documentation of assets on site; correspond internally regarding website updates; correspond with J. Robinson regarding visit to premises and shareholder correspondence.	3.60		
	<b>\$920.00</b>	<b>per hour x total hrs</b>	<b>15.20</b>	<b>\$13,984.00</b>

**Zoe Lin**

04/22/2024	first day set up tasks: creating teams drive, initiating website and hotline requests, preparing scotiabank new account forms	3.10		
04/23/2024	drafting notice to bank, preparing scotiabank new account forms, revising hotline voicemail script	1.70		
04/24/2024	Preparing new account forms and reaching out to Scotiabank, drafting notice to bank letter, creating hotline log tracker	1.40		
04/26/2024	Requested website update to include CCAA Proceedings section and drafted content; sent voicemail greeting script	1.20		
	<b>\$420.00</b>	<b>per hour x total hrs</b>	<b>7.40</b>	<b>\$3,108.00</b>

**Caitlin Moreland**

04/23/2024	Web update requested by Zoe Lin	0.50		
04/24/2024	Web update requested by Zoe Lin	0.20		
04/26/2024	Web update requested by Zoe Lin	1.30		
	<b>\$155.00</b>	<b>per hour x total hrs</b>	<b>2.00</b>	<b>\$310.00</b>

<b>Total Professional Services</b>			<b>CAD</b>	<b>\$17,402.00</b>
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**Invoice Summary**

**Antibe Therapeutics Inc.  
15 Prince Arthur Avenue  
Toronto, ON M5R 1B2  
Canada**

**Invoice No. May 08, 2024  
Job No. 102900001216  
Terms 500001.2878  
Currency Due Upon Receipt  
Tax Registration: CAD**

**RE: Receivership**

**Current Invoice Period: Charges posted through May 05, 2024**

<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Jim Robinson	Senior Managing Director	\$1,050.00	15.20	\$15,960.00
Jonathan Joffe	Senior Director	\$920.00	32.30	\$29,716.00
Zoe Lin	Consultant	\$420.00	7.80	\$3,276.00
Caitlin Moreland	Administrative Professional	\$155.00	5.00	\$775.00
<b>Total Professional Services</b>			<b>60.30</b>	<b>\$49,727.00</b>

<b>Invoice Total</b>	<b>CAD Amount</b>
	\$49,727.00
HST (13%)	\$6,464.51
<b>Total Due</b>	<b>\$56,191.51</b>

**Invoice Detail**

**Invoice No.** May 08, 2024  
**Job No.** 102900001216  
 500001.2878

**Total Professional Services**  
**Jim Robinson**

04/29/2024	Monday - Planning and coordination with team for day 1 activities upon receipt of receivership order; [REDACTED]; [REDACTED]; review of FDA letter received; website coordination and review; consideration of CCAA reserves and treatment in receivership; Tuesday - Review of final receivership order granted; coordination with team; review of letters and correspondence; receivership planning and considerations; [REDACTED]; [REDACTED]; website coordination and review; professional fees review subject to admin charge; review employment agreement; taking possession matters for banking and digital books and records;	3.10
04/30/2024	Monday - Planning and coordination with team for day 1 activities upon receipt of receivership order; [REDACTED]; [REDACTED]; review of FDA letter received; website coordination and review; consideration of CCAA reserves and treatment in receivership; Tuesday - Review of final receivership order granted; coordination with team; review of letters and correspondence; receivership planning and considerations; [REDACTED]; [REDACTED]; website coordination and review; professional fees review subject to admin charge; review employment agreement; taking possession matters for banking and digital books and records;	3.50
05/01/2024	Wednesday - Coordination and correspondence with JJ and TGF regarding various matters for receivership execution; [REDACTED]; [REDACTED]; review of FDA letter; meeting with management team; finalize creditor package; review employee listing and compensation details; Thursday - Prepare for and attend call with management team; prepare for and attend call with all Antibe employees; coordination and correspondence with team; review Kroll EL and provide comments; review banking update and respond to JJ questions; review supplier script; Friday - call with N. Renner at Davies regarding stakeholder inquiry; coordination and correspondence with team; review briefing memo received from S. Curtis on FDA response options;	2.20

**Invoice Detail**

**Invoice No.** May 08, 2024  
**Job No.** 102900001216  
 500001.2878

05/02/2024	Wednesday - Coordination and correspondence with JJ and TGF regarding [REDACTED]; [REDACTED]; review of FDA letter; meeting with management team; finalize creditor package; review employee listing and compensation details; Thursday - Prepare for and attend call with management team; prepare for and attend call with all Antibe employees; coordination and correspondence with team; review Kroll EL and provide comments; review banking update and respond to JJ questions; review supplier script; Friday - call with N. Renner at Davies regarding stakeholder inquiry; coordination and correspondence with team; review briefing memo received from S. Curtis on FDA response options;	4.50		
05/03/2024	Wednesday - Coordination and correspondence with JJ and TGF regarding [REDACTED]; [REDACTED]; review of FDA letter; meeting with management team; finalize creditor package; review employee listing and compensation details; Thursday - Prepare for and attend call with management team; prepare for and attend call with all Antibe employees; coordination and correspondence with team; review Kroll EL and provide comments; review banking update and respond to JJ questions; review supplier script; Friday - call with N. Renner at Davies regarding stakeholder inquiry; coordination and correspondence with team; review briefing memo received from S. Curtis on FDA response options;	1.90		
<b>\$1,050.00</b>		<b>per hour x total hrs</b>	<b>15.20</b>	<b>\$15,960.00</b>

**Jonathan Joffe**

04/29/2024	Correspond internally regarding website updates; correspond with S. Curtis regarding payroll processing, the company's listing of creditors and other matters; correspond with J. Robinson regarding payroll; [REDACTED]; respond to shareholder inquiries; respond to party interested in the Company's assets; draft Notice and Statement of Receiver.	2.80		
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**Invoice Detail**

**Invoice No.** **May 08, 2024**  
**Job No.** **102900001216**  
**500001.2878**

04/30/2024	<p>Review receivership order; finalize and send letters to RBC Royal Bank and IA Private Wealth; Corresponding with S. Curtis regarding Receivership Order, next steps, payroll, data preservation and other matters; meet with landlord at Antibe's office to discuss restricting access to the premises and next steps; meet with D. Legault at Antibe's office, Coordinating the preservation of the Antibe's data with J. Dorado from Kroll and J. Curtis; correspond with J. Curtis and B. Chin regarding preliminary information requests; update Notice and Statement of the Receiver and cover letters; correspond with representative from IA Private Wealth regarding investment holdings; correspond with E. Sellers regarding recovery of retainer funds.</p>	9.30
05/01/2024	<p>Correspond with E. Sellers regarding return of retainer funds; Attend call with shareholder in interested in the sale process; Attend call with B. Chin and S. Curtis to discuss accounting and payment procedures; [REDACTED]; [REDACTED]; Attend call with J. Robinson, D. Legault and S. Curtis regarding receivership matters; [REDACTED]; [REDACTED]; Finalize Notice and Statement of Receiver and arrange for copies of same to be mailed to all creditors and faxed to OSB; Attend call with RBC regarding Company's bank accounts; Attend call with iA Private Wealth regarding Company's investment accounts; Correspond with Kroll regarding data preservation.</p>	8.40
05/02/2024	<p>Attend call with J. Robinson, D. Legault and S. Curtis regarding receivership matters; Attend employee town hall meeting; Correspond with shareholders; Attend calls with RBC and iA Private wealth regarding the Company's cash balances; Draft and send letter to US-based RBC representative regarding Company's cross border bank account; Finalize communication script for vendor-facing Company employees; Correspond with E. Sellers; Correspond with employees; Correspond with Kroll regarding data preservation; review financial information provided by the Company; Draft letter to iA Private Wealth regarding transfer of liquid funds; Draft update to J. Robinson on banking and IT matters.</p>	6.30



**Invoice Detail**

**Invoice No.** May 08, 2024  
**Job No.** 102900001216  
 500001.2878

05/03/2024	Correspond with J. Robinson and TGF regarding [REDACTED]; Correspond with J. Robinson regarding banking matters; Correspond with Z. Lin regarding guaranteed investment options; Correspond with iA Private Wealth and revise letter requesting transfer of liquid funds; Correspond with B. Chin and with RBC regarding redemption of Company's credit card point balance; Update and maintain case website; Correspond with employee; Correspond with S. Curtis and D. Legault regarding licensees; Draft and send letters to the Company's insurance contacts at Marsh and at the Insurance Advisory Group Inc.	5.50		
	<b>\$920.00</b>	<b>per hour x total hrs</b>	<b>32.30</b>	<b>\$29,716.00</b>

**Zoe Lin**

04/29/2024	Walking through investor call, internal discussion, filling out new account forms	1.80		
04/30/2024	Preparing new estate form, updating website, preparing wire instructions, reaching out to company bank accounts to confirm notice of receivership	3.40		
05/01/2024	Preparing wire instructions and letter of direction for transfer of funds requests to company banks	0.50		
05/02/2024	Preparing wire instructions and letter of direction for transfer of funds requests to company banks, internal meeting	0.70		
05/03/2024	Reaching out to scotiabank team to inquire about GIC investing, updating hotline tracker	1.40		
	<b>\$420.00</b>	<b>per hour x total hrs</b>	<b>7.80</b>	<b>\$3,276.00</b>

**Caitlin Moreland**

04/29/2024	Web update requested by Jonathan Joffe	0.60		
04/30/2024	Web update requested by Jonathan Joffe	0.60		
05/01/2024	Mailing - 2.00 hours overtime	3.80		
	<b>\$155.00</b>	<b>per hour x total hrs</b>	<b>5.00</b>	<b>\$775.00</b>



*Invoice Detail*

Invoice No. **May 08, 2024**  
Job No. **102900001216**  
**500001.2878**

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<b>Total Professional Services</b>	<b>CAD</b>	<b>\$49,727.00</b>
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**Invoice Summary**

Antibe Therapeutics Inc.  
15 Prince Arthur Avenue  
Toronto, ON M5R 1B2  
Canada

Invoice No. **102900001234**  
Job No. **500001.2878**  
Terms **Due Upon Receipt**  
Currency **CAD**  
Tax Registration:

**RE: Receivership**

**Current Invoice Period: Charges posted through May 12, 2024**

<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Jim Robinson	Senior Managing Director	\$1,050.00	5.00	\$5,250.00
Jonathan Joffe	Senior Director	\$920.00	27.30	\$25,116.00
Zoe Lin	Consultant	\$420.00	2.50	\$1,050.00
Caitlin Moreland	Administrative Professional	\$155.00	0.30	\$46.50
<b>Total Professional Services</b>			<b>35.10</b>	<b>\$31,462.50</b>
<b>Expenses</b>				<b>Total</b>
Purchased Services				\$367.25
<b>Total Expenses</b>				<b>\$367.25</b>
<b>Invoice Total</b>				<b>CAD Amount</b>
				\$31,829.75
HST (13%)				\$4,137.87
<b>Total Due</b>				<b>\$35,967.62</b>





**Invoice Detail**

**Invoice No.** May 16, 2024  
**Job No.** 102900001234  
500001.2878

**Total Professional Services**  
**Jim Robinson**

05/06/2024	Monday - [REDACTED]; on-going correspondence with JJ on various receivership matters; Wednesday - finalize Kroll engagement; on-going correspondence with JJ on various receivership matters; review TGF cost estimate; Thursday - [REDACTED]; on-going correspondence with JJ on various receivership matters; Friday - meeting with JJ regarding budget, opex, professional fees and other estimates; on-going correspondence with JJ on various receivership matters;	1.00
05/07/2024	Monday - [REDACTED]; on-going correspondence with JJ on various receivership matters; Wednesday - finalize Kroll engagement; on-going correspondence with JJ on various receivership matters; review TGF cost estimate; Thursday - [REDACTED]; on-going correspondence with JJ on various receivership matters; Friday - meeting with JJ regarding budget, opex, professional fees and other estimates; on-going correspondence with JJ on various receivership matters;	1.00
05/08/2024	Monday - [REDACTED]; on-going correspondence with JJ on various receivership matters; Wednesday - finalize Kroll engagement; on-going correspondence with JJ on various receivership matters; review TGF cost estimate; Thursday - [REDACTED]; on-going correspondence with JJ on various receivership matters; Friday - meeting with JJ regarding budget, opex, professional fees and other estimates; on-going correspondence with JJ on various receivership matters;	1.00
05/09/2024	Monday - [REDACTED]; on-going correspondence with JJ on various receivership matters; Wednesday - finalize Kroll engagement; on-going correspondence with JJ on various receivership matters; review TGF cost estimate; Thursday - [REDACTED]; on-going correspondence with JJ on various receivership matters; Friday - meeting with JJ regarding budget, opex, professional fees and other estimates; on-going correspondence with JJ on various receivership matters;	1.00

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**Invoice Detail**

**Invoice No.** **May 16, 2024**  
**Job No.** **102900001234**  
**500001.2878**

05/10/2024	Monday - [REDACTED]; on-going correspondence with JJ on various receivership matters; Wednesday - finalize Kroll engagement; on-going correspondence with JJ on various receivership matters; review TGF cost estimate; Thursday - [REDACTED]; on-going correspondence with JJ on various receivership matters; Friday - meeting with JJ regarding budget, opex, professional fees and other estimates; on-going correspondence with JJ on various receivership matters;	1.00		
	<b>\$1,050.00</b>	<b>per hour x total hrs</b>	<b>5.00</b>	<b>\$5,250.00</b>

**Jonathan Joffe**

05/06/2024	Correspond with RBC regarding bank accounts and credit cards; notify licensees of receivership proceedings; attend call with CRA regarding payroll trust audit; Attend at of 15 Prince Arthur Ave offices and meet with S. Curtis to review the physical records on-site; correspond with J. Robinson; Correspond with TGF; Attend call with J. Belcher regarding SISP.	4.20		
05/07/2024	Attend call with RBC; Correspond with B. Chin regarding credit cards, transferring funds from the Company's US-based RBC account and CRA payroll audit; correspond with US-based RBC representative; correspond with Scotiabank regarding investment options for estate funds; correspond with Kroll regarding data retention; correspond with iA Private Wealth regarding transfer of investments; draft cost estimate analysis; correspond with Z. Lin regarding estate account balances; correspond with CRA regarding payroll trust audit; meet with J. Belcher regarding SISP; meet with J. Robinson regarding the proceedings.	5.80		
05/08/2024	[REDACTED] [REDACTED]; correspond with Kroll; review restructuring alternatives; draft cost estimate analysis and review records related to same; review outstanding employee expense claims from March and April, 2024; review on-going operating costs and discussing same with S. Curtis and B. Chin; attend call with RBC; correspond with Z. Lin regarding estate balances.	5.40		



**Invoice Detail**

**Invoice No.** May 16, 2024  
**Job No.** 102900001234  
 500001.2878

05/09/2024	Correspond with Z. Lin regarding estate funds; Correspond with iA Private Wealth regarding transfer of investment funds; Correspond with RBC regarding transfer of funds; correspond with licensee; [REDACTED]; correspond with landlord; draft cost estimate analysis and review related records; update J. Robinson regarding receipt of estate funds.	5.10	
05/10/2024	Correspond with S. Kinley regarding retrieval of personal belongings from the Company's office; correspond with B. Chin payroll and vendor payments; correspond with S. Curtis regarding a data warehousing vendor, operating vendors, payroll matters and the sale process; attend call with the landlord; update receivership cost estimate analysis; attend call with J. Robinson to review cost analysis and other receivership matters; correspond with CRA regarding payroll trust audit.	6.80	
	<b>\$920.00</b>	<b>per hour x total hrs</b>	<b>27.30</b>
			<b>\$25,116.00</b>

**Zoe Lin**

05/06/2024	Checking for incoming wire transfers, finalizing Ascend estate form	0.50	
05/07/2024	Checking for incoming wire transfer, purchasing Ascend license key	0.40	
05/09/2024	Prepared creditor notice package to be mailed, checking for incoming wire transfers	0.50	
05/10/2024	Reconciling drop box supporting invoices with submitted expense reports for March and April	1.10	
	<b>\$420.00</b>	<b>per hour x total hrs</b>	<b>2.50</b>
			<b>\$1,050.00</b>

**Caitlin Moreland**

05/06/2024	Web update requested by Jonathan Joffe	0.30	
	<b>\$155.00</b>	<b>per hour x total hrs</b>	<b>0.30</b>
			<b>\$46.50</b>

	<b>Total Professional Services</b>	<b>CAD</b>	<b>\$31,462.50</b>
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**Invoice Summary**

**Antibe Therapeutics Inc.  
15 Prince Arthur Avenue  
Toronto, ON M5R 1B2  
Canada**

**Invoice No. 102900001239  
Job No. 500001.2878  
Terms Due Upon Receipt  
Currency CAD  
Tax Registration:**

**RE: Receivership**

**Current Invoice Period: Charges posted through May 19, 2024**

<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Michael Rachlin	Senior Managing Director	\$1,710.00	3.00	\$5,130.00
Pat Shafer	Managing Director	\$1,410.00	6.70	\$9,447.00
Ancy Johnson	Senior Director	\$1,320.00	1.00	\$1,320.00
Jim Robinson	Senior Managing Director	\$1,050.00	6.30	\$6,615.00
Jonathan Joffe	Senior Director	\$920.00	29.90	\$27,508.00
Dean Perlman	Director	\$740.00	0.40	\$296.00
Zoe Lin	Consultant	\$420.00	4.20	\$1,764.00
Caitlin Moreland	Administrative Professional	\$155.00	0.50	\$77.50
<b>Total Professional Services</b>			<b>52.00</b>	<b>\$52,157.50</b>

<b>Invoice Total</b>	<b>CAD Amount</b>
	\$52,157.50
HST (13%)	\$6,780.48
<b>Total Due</b>	<b>\$58,937.98</b>



**Invoice Detail**

**Invoice No.** May 21, 2024  
**Job No.** 102900001239  
500001.2878

**Total Professional Services**  
**Michael Rachlin**

05/13/2024	Antibe intro call	0.50		
05/13/2024	Call with Stifel	1.00		
05/14/2024	Internal planning call	0.50		
05/17/2024	call with Raymond James to evaluate investment banking opportunity	1.00		
			<b>\$1,710.00</b>	<b>per hour x total hrs</b>
			<b>3.00</b>	<b>\$5,130.00</b>

**Pat Shafer**

05/14/2024	Introductory call, initial document review, analysis	0.70		
05/15/2024	Introductory call, initial document review, analysis	2.00		
05/16/2024	Introductory call, initial document review, analysis	3.00		
05/17/2024	Introductory call, initial document review, analysis	1.00		
			<b>\$1,410.00</b>	<b>per hour x total hrs</b>
			<b>6.70</b>	<b>\$9,447.00</b>

**Ancy Johnson**

05/16/2024	Review of client provided documentation - specifically reviewed IND submission documents; gathered general overview of product market and competitors	1.00		
			<b>\$1,320.00</b>	<b>per hour x total hrs</b>
			<b>1.00</b>	<b>\$1,320.00</b>

**Jim Robinson**

**Invoice Detail**

**Invoice No.** May 21, 2024  
**Job No.** 102900001239  
 500001.2878

05/13/2024	Monday - Attend CCAA termination hearing, call with counsel regarding same; [REDACTED] Tuesday - Call with US FTI specialists team regarding FDA letter and options available; Wednesday - Call with CEO; call with COO regarding next steps; Thursday - Correspondence and discussions regarding potential sale advisors; Friday - Call with TGF on [REDACTED];	2.00
05/14/2024	Monday - Attend CCAA termination hearing, call with counsel regarding same; [REDACTED] Tuesday - Call with US FTI specialists team regarding FDA letter and options available; Wednesday - Call with CEO; call with COO regarding next steps; Thursday - Correspondence and discussions regarding potential sale advisors; Friday - Call with TGF on [REDACTED];	0.30
05/15/2024	Monday - Attend CCAA termination hearing, call with counsel regarding same; [REDACTED] Tuesday - Call with US FTI specialists team regarding FDA letter and options available; Wednesday - Call with CEO; call with COO regarding next steps; Thursday - Correspondence and discussions regarding potential sale advisors; Friday - Call with TGF on [REDACTED];	1.00
05/16/2024	Monday - Attend CCAA termination hearing, call with counsel regarding same; [REDACTED] Tuesday - Call with US FTI specialists team regarding FDA letter and options available; Wednesday - Call with CEO; call with COO regarding next steps; Thursday - Correspondence and discussions regarding potential sale advisors; Friday - Call with TGF on [REDACTED];	1.00

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**Invoice Detail**

**Invoice No.** May 21, 2024  
**Job No.** 102900001239  
 500001.2878

05/17/2024	Monday - Attend CCAA termination hearing, call with counsel regarding same; [REDACTED] Tuesday - Call with US FTI specialists team regarding FDA letter and options available; Wednesday - Call with CEO; call with COO regarding next steps; Thursday - Correspondence and discussions regarding potential sale advisors; Friday - Call with TGF on [REDACTED]; [REDACTED];	2.00
	<b>\$1,050.00</b>	<b>per hour x total hrs</b>
		<b>6.30</b>
		<b>\$6,615.00</b>

**Jonathan Joffe**

05/13/2024	Attend call with J. Robinson and M. Rachlin; [REDACTED] [REDACTED] correspond with B. Chin regarding missing bank statements and payroll; Correspond with employees regarding payroll details; review CCAA termination order and endorsement.	4.60
05/14/2024	Attend call with J. Robinson, M. Rachlin, P. Shafer and A. Johnson; correspond and attend calls with Paychex regarding US payroll; correspond with employees regarding payroll details; correspond with C. Moreland regarding updates to website; correspond with D. Legault and S. Curtis regarding patents and license agreements; correspond with B. Chin regarding CRA trust examination; correspond with J. Ordon; correspond with and attend calls with B. Lyle.	5.20
05/15/2024	Attend call with J. Robinson and S. Curtis; attend call with J. Robinson and D. Legault; Attend call with CRA regarding payroll trust audit; meet with S. Kinley at premises to retrieve personal items; correspond with J. Ordon; Attend call with J. Robinson; Review and process payroll.	8.20





**Invoice Detail**

**Invoice No.** May 21, 2024  
**Job No.** 102900001239  
 500001.2878

05/16/2024	Attend meeting with J. Robinson and J. Belcher; draft termination letter and correspond with TGF regarding same; prepare analyses of ongoing employee costs during the receivership and attend call with J. Robinson regarding same; Correspond with A. Johnson and S. Curtis regarding landscape analyses for the Company's lead drug; correspond with B. Lyle regarding FMV assessment of Company's office assets; Review creditor inquiry and correspond with Z. Lin regarding same; correspond with iA regarding missing account statements; review research prepared by A. Johnson; [REDACTED].	7.20		
05/17/2024	Attend call with J. Robinson and TGF; correspond with Z. Lin and D. Perlman regarding the transfer of segregated funds related to the CCAA administration and D&O charges; draft letters to landlord and to subtenant and corresponding with TGF regarding same; correspond with S. Curtis and I. Ferreira regarding the Singapore arbitration award ruling; correspond with employees regarding payroll issues; review comments from TGF on termination letters and corresponding with J. Robinson regarding same.	4.30		
05/18/2024	Correspond with Z. Lin regarding payroll wires; correspond with D. Legault and S. Curtis regarding receivership planning; correspond with J. Ordon.	0.40		
	<b>\$920.00</b>	<b>per hour x total hrs</b>	<b>29.90</b>	<b>\$27,508.00</b>

**Dean Perlman**

05/17/2024	Call with Scotiabank on currency account transfer request; internal discussions; set up currency account transfer.	0.40		
	<b>\$740.00</b>	<b>per hour x total hrs</b>	<b>0.40</b>	<b>\$296.00</b>

**Zoe Lin**

05/13/2024	Internal discussion on disbursement processing	0.30		
05/15/2024	Internal meetings, creating templates for payroll disbursements, processing disbursements, monitoring hotline	3.40		
05/17/2024	Monitoring hotline, checking dropbox for Arbitration Award file	0.50		

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**Invoice Detail**

**Invoice No.** May 21, 2024  
**Job No.** 102900001239  
500001.2878

<b>\$420.00</b>	<b>per hour x total hrs</b>	<b>4.20</b>	<b>\$1,764.00</b>
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**Caitlin Moreland**

05/14/2024	Web update requested by Jonathan Joffe	0.50	
		<b>\$155.00</b>	<b>\$77.50</b>

<b>Total Professional Services</b>	<b>CAD</b>	<b>\$52,157.50</b>
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**Invoice Summary**

Antibe Therapeutics Inc.  
15 Prince Arthur Avenue  
Toronto, ON M5R 1B2  
Canada

Invoice No. **102900001266**  
Job No. **500001.2878**  
Terms **Due Upon Receipt**  
Currency **CAD**  
Tax Registration:

**RE: Receivership**

**Current Invoice Period: Charges posted through May 26, 2024**

Name	Title	Rate	Hours	Total
Michael Rachlin	Senior Managing Director	\$1,710.00	1.00	\$1,710.00
Jim Robinson	Senior Managing Director	\$1,050.00	4.40	\$4,620.00
Jonathan Joffe	Senior Director	\$920.00	29.00	\$26,680.00
<b>Total Professional Services</b>			<b>34.40</b>	<b>\$33,010.00</b>

Invoice Total	CAD Amount
	\$33,010.00
HST (13%)	\$4,291.30
<b>Total Due</b>	<b>\$37,301.30</b>





**Invoice Detail**

**Invoice No.** May 30, 2024  
**Job No.** 102900001266  
 500001.2878

**Total Professional Services**  
**Michael Rachlin**

05/20/2024	call with Raymond James	0.50	
05/21/2024	Raymond James	0.50	
<b>\$1,710.00</b>		<b>per hour x total hrs</b>	<b>1.00</b>
			<b>\$1,710.00</b>

**Jim Robinson**

05/21/2024	Tuesday - Call with potential IB regarding opportunity and discussions with FTICA regarding proposal; general file matters; Wednesday - Call with Bloom Burton regarding proposal; call with Cassels and TGF, follow up call with TGF; general file matters; Thursday - Review Bloom Burton EL and edit; general file matters; Friday - Status call with TGF; call with employees regarding go-forward arrangements; receivership forecast; correspondence with team; general file matters;	1.00
05/22/2024	Tuesday - Call with potential IB regarding opportunity and discussions with FTICA regarding proposal; general file matters; Wednesday - Call with Bloom Burton regarding proposal; call with Cassels and TGF, follow up call with TGF; general file matters; Thursday - Review Bloom Burton EL and edit; general file matters; Friday - Status call with TGF; call with employees regarding go-forward arrangements; receivership forecast; correspondence with team; general file matters;	1.20
05/23/2024	Tuesday - Call with potential IB regarding opportunity and discussions with FTICA regarding proposal; general file matters; Wednesday - Call with Bloom Burton regarding proposal; call with Cassels and TGF, follow up call with TGF; general file matters; Thursday - Review Bloom Burton EL and edit; general file matters; Friday - Status call with TGF; call with employees regarding go-forward arrangements; receivership forecast; correspondence with team; general file matters;	0.40

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**Invoice Detail**

**Invoice No.** May 30, 2024  
**Job No.** 102900001266  
 500001.2878

05/24/2024	Tuesday - Call with potential IB regarding opportunity and discussions with FTICA regarding proposal; general file matters; Wednesday - Call with Bloom Burton regarding proposal; call with Cassels and TGF, follow up call with TGF; general file matters; Thursday - Review Bloom Burton EL and edit; general file matters; Friday - Status call with TGF; call with employees regarding go-forward arrangements; receivership forecast; correspondence with team; general file matters;	1.80		
	<b>\$1,050.00</b>	<b>per hour x total hrs</b>	<b>4.40</b>	<b>\$4,620.00</b>

**Jonathan Joffe**

05/20/2024	Correspond with former employee; correspond with Kroll; correspond with J. Robinson regarding arbitration ruling.	0.90		
05/21/2024	Correspond with TGF regarding [REDACTED]; attend call with landlord regarding termination of the lease and the letter sent in respect of same; correspond with former employee; correspond with Kroll; correspond with J. Ordon; correspond with B. Chin regarding iA statements; correspond with Z. Lin and former employee regarding rejected wire payment; correspond with D. Perlman regarding estate disbursement requests; attending call with J. Robinson; issuing termination letters to eight employees and independent contractors; correspond with B. Chin regarding deposits and tax credits; correspond with D. Legault and S. Curtis regarding compilation of prospective purchasers; Corresponding with Dalriada Drug Discovery Inc., a former vendor, regarding return of a deposit; correspond with former employees; update receivership budget.	6.80		
05/22/2024	Attend at premises to coordinate removal of records, coordinate collection of company assets; correspond with D. Legault and P. Stern regarding employees personal items; correspond with Danbury; attend call with J. Robinson and J. Belcher; review correspondence from Raymond James and Stifel; attend call with J. Robinson; correspond with terminated employees; correspond with J. Robinson and TGF regarding [REDACTED]; correspond with B. Chin regarding payroll and WEPP matters; review employee device list and related market values.	5.80		

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**Invoice Detail**

**Invoice No.** May 30, 2024  
**Job No.** 102900001266  
 500001.2878

05/23/2024	Update receivership budget; attend call with former employee; review IT device list and recoverable values; correspond with former employees about purchasing company equipment; correspond with D. Legault and S. Curtis; compile WEPP details.	4.10	
05/24/2024	Attend at premises to coordinate removal of remaining items and document vacant premises; coordinate retrieval of D. Legault's personal items; attend call with J. Robinson and TGF regarding [REDACTED]; attend at Kroll offices to drop off computers from Company's premises; call with Z. Lin to discuss cash consumption at end of CCAA and analysis related to Trust claim adjudication; correspond with terminated employees; attend call with J. Robinson, D. Legault and S. Curtis; correspond with J. Robinson and K. Foster regarding OSB estate number; review WEPP administration matters and compile employee data in respect of same; review accrued vacation schedule.	7.20	
05/25/2024	Review WEPP data; review payments to be issued for post-filing expenses and correspond with Z. Lin regarding same; review and update weekly receivership budget; correspond with Kroll; correspond with former employees; prepare and send letter to RBC regarding transfer of funds to the Receiver's estate accounts.	4.20	
	<b>\$920.00</b>	<b>per hour x total hrs</b>	<b>29.00</b>
			<b>\$26,680.00</b>

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**Total Professional Services CAD \$33,010.00**

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**Invoice Summary**

Antibe Therapeutics Inc.  
15 Prince Arthur Avenue  
Toronto, ON M5R 1B2  
Canada

Invoice No. **102900001304**  
Job No. **500001.2878**  
Terms **Due Upon Receipt**  
Currency **CAD**  
Tax Registration:

**RE: Receivership**

**Current Invoice Period: Charges posted through May 31, 2024**

<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Jim Robinson	Senior Managing Director	\$1,050.00	3.00	\$3,150.00
Jonathan Joffe	Senior Director	\$920.00	25.40	\$23,368.00
Dean Perlman	Director	\$740.00	1.10	\$814.00
Zoe Lin	Consultant	\$420.00	21.90	\$9,198.00
<b>Total Professional Services</b>			<b>51.40</b>	<b>\$36,530.00</b>

<b>Invoice Total</b>	<b>CAD Amount</b>
	\$36,530.00
HST (13%)	\$4,748.90
<b>Total Due</b>	<b>\$41,278.90</b>



**Invoice Detail**

**Invoice No.** May 31, 2024  
**Job No.** 102900001304  
 500001.2878

**Total Professional Services**  
**Jim Robinson**

05/28/2024	Tuesday - [REDACTED]; finalize BB engagement letter; correspondence with team; Wednesday - Kickoff call with BB; [REDACTED] [REDACTED]; correspondence with team; Friday - Follow up call with BB; correspondence with team;	1.00
05/29/2024	Tuesday - [REDACTED]; finalize BB engagement letter; correspondence with team; Wednesday - Kickoff call with BB; [REDACTED] [REDACTED]; correspondence with team; Friday - Follow up call with BB; correspondence with team;	1.00
05/31/2024	Tuesday - [REDACTED]; finalize BB engagement letter; correspondence with team; Wednesday - Kickoff call with BB; [REDACTED] [REDACTED]; correspondence with team; Friday - Follow up call with BB; correspondence with team;	1.00
<b>\$1,050.00</b>		
<b>per hour x total hrs</b>		<b>3.00</b>
		<b>\$3,150.00</b>

**Jonathan Joffe**

05/27/2024	Correspond with B. Chin regarding WEPP details; correspond internally regarding estate number; attend call with and correspond with OSB regarding receivership; correspond with Kroll and former employees; attend call with G. Watson and J. Robinson; update draft budget and circulate to J. Robinson; correspond with Z. Lin regarding expected incoming wire transfers.	4.80
05/28/2024	Correspond with J. Robinson regarding budget analysis; correspond with Z. Lin regarding wire transfers and regarding cash tracing analyses; correspond with Paychex regarding US Payroll matters; correspond with shareholder; correspond with former employees and independent contractors; correspond with B. Chin regarding payroll matters and historical financial records; reviewing IT asset values and corresponding with former employees regarding purchase of same; [REDACTED] [REDACTED].	4.60



**Invoice Detail**

**Invoice No.** May 31, 2024  
**Job No.** 102900001304  
 500001.2878

05/29/2024	Correspond internally and with OSB regarding assignment of estate number; correspond with and attend call with S. Curtis regarding employee and vendor issues; correspond with RBC regarding company's bank accounts; attend call with Bloom Burton and TGF; correspond with S. Curtis regarding data room access; correspond with J. Burton regarding FDA hold letter and management's response in relation to same; correspond with Paychex regarding US payroll matters; attend call with J. Robinson and TGF; correspond with TGF regarding [REDACTED]	5.50	
05/30/2024	Correspond with Paychex and B. Chin regarding US payroll; correspond with S. Curtis regarding Axiom; correspond with J. Burton regarding data warehousing requirements during the sale process; review correspondence from OSB regarding estate number and corresponding with J. Robinson and K. Foster regarding same; Correspond with Deloitte and Z. Lin regarding retainer funds held by Deloitte; correspond with Kroll and former employees regarding device imaging; review email from S. Curtis regarding sale of Citagenix and corresponding with J. Robinson and TGF regarding same; correspond with Danbury regarding IT asset sale; corresponding with B. Chin regarding final payroll calculations; review payroll, employee expense reimbursements and deductions; correspond with Z. Lin regarding payroll funding.	6.60	
05/31/2024	Attend calls with Z. Lin regarding fund tracing analyses; review correspondence from Deloitte regarding retainer and corresponding with Z. Lin regarding same; [REDACTED]; correspond with Bloom Burton regarding list of prospective purchasers; reviewing Bloom Burton's standard form of non-disclosure agreements; corresponding with Paliare Roland regarding outstanding CCAA professional fees; correspond with Kroll and former employees regarding device imaging; correspond with J. Robinson regarding fund tracing analyses.	3.90	
	<b>\$920.00</b>	<b>per hour x total hrs</b>	<b>25.40</b>
			<b>\$23,368.00</b>

**Dean Perlman**

05/27/2024	Drafting TR forms for employee salary payment and expense reimbursement TR Forms; call with Scotiabank to update originator details.	1.10	
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**Invoice Detail**

**Invoice No.** May 31, 2024  
**Job No.** 102900001304  
500001.2878

<b>\$740.00</b>	<b>per hour x total hrs</b>	<b>1.10</b>	<b>\$814.00</b>
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**Zoe Lin**

05/27/2024	Processing disbursements; working through cash reconciliation between company's banking and receiver's banking	3.70	
05/28/2024	reprocessing failed payroll disbursement; internal meetings; preparing ccaa to receivership cash bridge; checking for incoming wires	0.50	
05/29/2024	[REDACTED]; internal discussion	2.10	
05/30/2024	[REDACTED]; processing disbursements; checking status of wire transfers	8.20	
05/31/2024	[REDACTED], contacting Scotiabank	7.40	
	<b>\$420.00</b>	<b>per hour x total hrs</b>	<b>21.90</b>
			<b>\$9,198.00</b>

<b>Total Professional Services</b>	<b>CAD</b>	<b>\$36,530.00</b>
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This is Exhibit "B" referred to in the  
Affidavit of Jim Robinson sworn by Jim Robinson at the City  
of Toronto, in the Province of Ontario, before me  
this 18th day of June, 2024 in accordance with  
*O. Reg. 431/20, Administering Oath or Declaration Remotely.*



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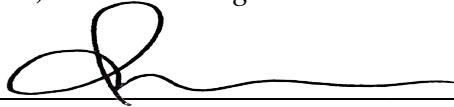
A Commissioner for taking affidavits

**INES FERREIRA**

**INVOICE SUMMARY**  
(all amounts stated in CAD)

<b>Invoice #</b>	<b>Period Ending</b>	<b>Invoice Date</b>	<b>Fees</b>	<b>Disbursements</b>	<b>HST</b>	<b>Invoice Total</b>	<b>Hours</b>	<b>Average Hourly Fee Rate (excluding Disb. and HST)</b>
102900001168	28-Apr-24	3-May-24	\$17,402.00	\$22.12	\$2,265.14	\$19,689.26	24.6	\$707.40
102900001216	5-May-24	8-May-24	\$49,727.00	\$0.00	\$6,464.51	\$56,191.51	60.3	\$824.66
102900001234	12-May-24	16-May-24	\$31,462.50	\$367.25	\$4,137.87	\$35,967.62	35.1	\$896.37
102900001239	19-May-24	21-May-24	\$52,157.50	\$0.00	\$6,780.48	\$58,937.98	52.0	\$1,003.03
102900001266	26-May-24	30-May-24	\$33,010.00	\$0.00	\$4,291.30	\$37,301.30	34.4	\$959.59
102900001304	31-May-24	31-May-24	\$36,530.00	\$0.00	\$4,748.90	\$41,278.90	51.4	\$710.70
<b>TOTAL</b>			<b>\$220,289.00</b>	<b>\$389.37</b>	<b>\$28,688.20</b>	<b>\$249,366.57</b>	<b>257.8</b>	<b>\$854.50</b>

This is Exhibit "C" referred to in the  
Affidavit of Jim Robinson sworn by Jim Robinson at the City  
of Toronto, in the Province of Ontario, before me  
this 18th day of June, 2024 in accordance with  
*O. Reg. 431/20, Administering Oath or Declaration Remotely.*

A handwritten signature in black ink, appearing to read 'INES FERREIRA', written over a horizontal line.

A Commissioner for taking affidavits

**INES FERREIRA**

**TIMEKEEPER AND BILLING RATE SUMMARY**

<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Fees</b>
Michael Rachlin	Senior Managing Director	\$1,710.00	4.0	\$6,840.00
Pat Shafer	Senior Managing Director	\$1,410.00	6.7	\$9,447.00
Ancy Johnson	Senior Director	\$1,320.00	1.0	\$1,320.00
Jim Robinson	Senior Managing Director	\$1,050.00	33.9	\$35,595.00
Jonathan Joffe	Senior Director	\$920.00	159.1	\$146,372.00
Dean Perlman	Director	\$740.00	1.5	\$1,110.00
Zoe Lin	Consultant	\$420.00	43.8	\$18,396.00
Caitlin Moreland	Administrative Professional	\$155.00	7.8	\$1,209.00
<b>TOTAL</b>			<b>257.8</b>	<b>\$220,289.00</b>



IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*

NUANCE PHARMA LTD.

- and -

ANTIBE THERAPEUTICS INC.

Applicant

Respondent

Court File No. CV-24-00719237-00CL

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

Proceedings commenced at Toronto, Ontario

**AFFIDAVIT OF JIM ROBINSON**

**Thornton Grout Finnigan LLP**

TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200  
Toronto, ON M5K 1K7

**Rebecca L. Kennedy (LSO# 61146S)**

Tel: (416) 304-0603  
Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

**Ines Ferreira (LSO# 81472A)**

Tel: (416) 304-0461  
Email: [iferreira@tgf.ca](mailto:iferreira@tgf.ca)

Lawyers for the Court-appointed Receiver,  
FTI Consulting Canada Inc.

## **APPENDIX “G”**

**APPENDIX "G"**

Court File No.: CV-24-00719237-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101  
OF THE COURTS OF JUSTICE ACT**

**AFFIDAVIT OF REBECCA L. KENNEDY  
(Sworn June 18, 2024)**

I, **REBECCA L. KENNEDY**, of the City of Pickering, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a partner in the law firm of Thornton Grout Finnigan LLP ("**TGF**"), lawyers for FTI Consulting Canada Inc. in its capacities as Court-appointed receiver and manager (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings and properties of Antibe Therapeutics Inc. and as such, I have knowledge of the matters to which I hereinafter depose, except where stated to be on information and belief, and where so stated, I verily believe it to be true.
2. Attached hereto as Exhibit "**A**" are copies of the invoices (the "**Invoices**") issued by TGF to the Receiver for fees and disbursements incurred by TGF in the course of this receivership proceeding for the period from April 17, 2024 to June 7, 2024 (the "**Fee Approval Period**").
3. As evidenced by the Invoices attached at Exhibit "**A**", in the course of the Fee Approval Period, TGF counsel, students and law clerk have expended a total of 154 hours in connection with

this receivership proceeding, and have incurred CAD \$95,452.50 in fees, CAD \$2,863.58 in disbursements and CAD \$12,781.09 in HST, for a total of CAD \$111,097.17.

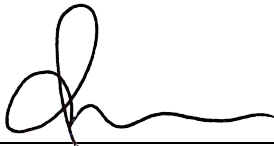
4. Attached hereto as Exhibit “B” is a schedule summarizing the Invoices and the total billable hours charged.

5. Attached hereto as Exhibit “C” is a schedule summarizing the respective years of call, where applicable, and billing rates of each of the TGF professionals who acted for the Receiver during the Fee Approval Period.

6. To the best of my knowledge, the rates charged by TGF in the course of this receivership proceeding are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services. I believe the total hours, fees and disbursements incurred by TGF on this matter are reasonable and appropriate in the circumstances.

7. This Affidavit is sworn in support of a motion, *inter alia*, approving TGF’s fees and disbursements incurred in respect of this receivership proceeding during the Fee Approval Period.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 18th day of  
June, 2024.



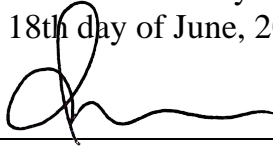
\_\_\_\_\_  
Commissioner for Taking Affidavits, etc.

**Ines Ferreira (LSO # 81472A)**



\_\_\_\_\_  
**REBECCA L. KENNEDY**

This is Exhibit "A" referred to in the  
Affidavit of Rebecca L. Kennedy sworn before me  
this 18th day of June, 2024.



---

A Commissioner for taking affidavits



**Thornton Grout Finnigan LLP**  
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON Canada M5K 1K7  
T 416.304.1616 F 416.304.1313

FTI Consulting Canada Inc.  
79 Wellington St. W., Suite 2010  
TD Waterhouse Tower, Box 104  
Toronto, ON M5K 1G8

June 10, 2024

Attention: Jim Robinson

**Invoice No. 40912**  
**File No. 1522-016**

**RE: Antibe Therapeutics Inc.**

**TO ALL PROFESSIONAL SERVICES RENDERED HEREIN INCLUDING THE FOLLOWING for the period ending: April 21, 2024**

**FEES**

Apr-17-24	Review and respond to email correspondence; review of factum; review of memorandum; review of materials;	1.80	RK
Apr-18-24	Emails to and from [REDACTED];	0.20	RK

And to all other necessary telephone communications, attendances and correspondence with respect to the conduct of this matter.

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>	
Rebecca Kennedy	2.00	\$975.00	\$1,950.00	
<b>Total Fees</b>			<b>\$1,950.00</b>	
<b>HST (@ 13%) on Fees</b>			<b>\$253.50</b>	
<b>Total Fees and HST</b>				<b>\$2,203.50</b>
<b><u>DISBURSEMENTS</u></b>				
3% Administrative Fee			\$58.50	
<b>Total Taxable Disbursements</b>			<b>\$58.50</b>	
<b>HST (@ 13%) on Taxable Disbursements</b>			<b>\$7.61</b>	
<b>Total *Non-Taxable Disbursements</b>			<b>\$0.00</b>	
<b>Total Disbursements and HST</b>				<b>\$66.11</b>
<b>TOTAL NOW DUE</b>				<b>\$2,269.61</b>
<b>Paid from funds held in trust</b>				<b>\$2,269.61</b>
<b>BALANCE DUE AND OWING</b>				<b><u>NIL</u></b>

**THORNTON GROUT FINNIGAN LLP**



**Per: Rebecca Kennedy**

E. & O.E.

GST/HST #87042 1039 RT0001 \* GST/HST Exempt

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 33 of The Solicitor's Act, interest will be charged at the rate of 4.00% per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

*Payment can be made to us by:*

*1. Cheque Payable to Thornton Grout Finnigan LLP or*

*2. EFT or Wire Transfer to:*

*Account No. 027779-002*

*Transit No. 10532*

*Institution No. 016 (HSBC Bank Canada)*

*Account Name - Thornton Grout Finnigan LLP*

*Address of Bank - 111 Yonge Street, Toronto, Ontario M5C 1W4*

*Name of Bank - HSBC Bank Canada*

*SwiftCode: HKBCCATT*

*Attention: Credit Services Department*

*Please send remittance advice to [ychiu@tgf.ca](mailto:ychiu@tgf.ca)*









**Thornton Grout Finnigan LLP**  
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre  
 100 Wellington Street West  
 Suite 3200, P.O. Box 329  
 Toronto, ON Canada M5K 1K7  
 T 416.304.1616 F 416.304.1313

FTI Consulting Canada Inc.  
 79 Wellington St. W., Suite 2010  
 TD Waterhouse Tower, Box 104  
 Toronto, ON M5K 1G8

June 17, 2024

**Attention: Jim Robinson**

**Invoice No. 40961**  
**File No. 1522-016**

**RE: Antibe Therapeutics Inc.**

**TO ALL PROFESSIONAL SERVICES RENDERED HEREIN INCLUDING THE FOLLOWING**  
**for the period ending: June 7, 2024**

**FEES**

Apr-22-24	Review and respond to email correspondence; review of endorsement; review of order; [REDACTED];	1.50	RK
Apr-23-24	Prepare for and attend call with counsel and FTI; review of revised Orders; emails regarding same; call with J. Robinson; revise CCAA Termination Order; revise email regarding same; [REDACTED];	2.00	RK
	Internal meeting with R. Kennedy regarding [REDACTED]; review draft CCAA Termination Order and Receivership Order; internal email with R. Kennedy;	0.90	IF
Apr-24-24	Review and revise court orders; emails regarding same; [REDACTED]; further review of revised orders;	2.00	RK
	Reviewing Endorsement of Justice Osborne regarding terminating CCAA proceeding and appointing a receiver; internal email with students regarding research; review research provided by student; review draft receivership order; further changes to receivership order;	2.50	IF
	Conduct research on issues from I. Ferreira;	1.50	DA
Apr-25-24	Review and respond to email correspondence; call with E. Cobb; [REDACTED]; call with same; further emails on form of order;	1.30	RK

	Review concerns raised regarding the language in the CCAA Termination order relating to the monitor's charges; internal email with R. Kennedy regarding [REDACTED];	0.10	IF
Apr-26-24	Review and respond to email correspondence; prepare for and attend call regarding Order; emails regarding FDA letter;	0.60	RK
	Conference call with counsel on record in the terminated CCAA proceedings and counsel involved in the receivership to discuss terms of CCAA Termination order; review proposed changes by E. Cobb to CCAA Termination order; review FDA letter regarding hold on clinical trial;	0.50	IF
Apr-27-24	Review correspondence from receiver forwarding communication from investor to Justice Osborne;	0.10	IF
Apr-29-24	Review of fee summary; emails regarding same; emails regarding order;	0.40	RK
	Review correspondence between counsel for the monitor in the CCAA proceedings and counsel in the receivership regarding fees;	0.10	IF
Apr-30-24	Review of granted order; emails regarding same; review communications with financial institutions; emails regarding calls;	1.00	RK
	Scheduling meeting regarding status of proceeding considering issued receivership order; [REDACTED];	0.10	IF
May-01-24	Review and respond to email correspondence; prepare for and attend call with counsel; debrief with I. Ferreira; review of employment agreement; review of Form 87; emails regarding same;	2.00	RK
	Review correspondence regarding the employment contract with Antibe; [REDACTED]; review notice and statement of the receiver and approving same; prepare draft email to counsel for the monitor in CCAA proceeding regarding claim for privilege;	1.90	IF
May-02-24	Circulate draft email to Receiver and [REDACTED];	0.10	IF
May-03-24	Emails regarding accounts and Kroll engagement;	0.40	RK
	Review of Kroll agreement for comments; prepare summary of possible changes to R. Kennedy for review;	1.80	IF
May-06-24	Emails from and to I. Ferreira; [REDACTED]; emails regarding same; review Kroll agreement; further emails; email to I. Ferreira regarding [REDACTED];	1.40	RK
	Review [REDACTED] and circulate proposed changes thereto; correspondence with client regarding [REDACTED];	1.70	IF

	[REDACTED]; [REDACTED]; [REDACTED]; correspondence with R. Kennedy regarding [REDACTED]; [REDACTED]; [REDACTED];		
May-07-24	Emails from and to I. Ferreira; emails to FTI;	0.60	RK
	Correspondence with R. Kennedy regarding [REDACTED]; correspondence with client regarding [REDACTED];	0.60	IF
May-08-24	Emails regarding cost of administration; emails regarding NDA; review revisions to same;	0.70	RK
	Correspondence with R. Kennedy regarding [REDACTED]; call with client regarding [REDACTED]; [REDACTED]; [REDACTED]; review changes to Non-Disclosure Agreement;	0.70	IF
May-09-24	Emails regarding NDA;	0.40	RK
	Reviewing executed copy of NDA; [REDACTED]; [REDACTED];	0.40	IF
May-13-24	Review and respond to email correspondence; calls with J. Robinson; prepare for and attend court hearing; debrief with J. Robinson; attend call with counsel;	3.00	RK
	Attend hearing regarding approving counsel's fees; [REDACTED]; [REDACTED];	1.60	IF
May-14-24	Call with client regarding [REDACTED]; [REDACTED]; review termination requirements for landlord;	0.50	IF
May-15-24	Emails from and to I. Ferreira; call with J. Robinson; further email to I. Ferreira;	0.50	RK
	Correspondence with client regarding [REDACTED];	0.10	IF
May-16-24	Review employee termination letter for comments;	0.20	IF
May-17-24	Review and respond to email correspondence; prepare for and attend call with J. Robinson and J. Joffe;	1.40	RK
	Meet with client regarding [REDACTED]; [REDACTED]; call with R. Kennedy regarding [REDACTED]; [REDACTED]; review draft employee termination letter and providing comments to client; review draft lease termination letter for comments;	1.70	IF
May-20-24	Review and respond to email correspondence;	0.30	RK

May-21-24	Review and respond to email correspondence;	0.40	RK
	Correspondence with client regarding [REDACTED];	0.10	IF
May-22-24	Review of materials regarding employees; prepare for and attend call with A. Mersky; debrief call regarding same;	1.30	RK
	[REDACTED]; meeting with A. Mersky and Receiver; debrief meeting with R. Kennedy and client; review employment contract; [REDACTED]; review facta filed in CCAA and instructions to students to conduct legal research; review facta received from counsel for A. Mersky; prepare summary to R. Kennedy of materials received from counsel;	5.30	IF
May-23-24	Emails from and to I. Ferreira; review of blackline for engagement letter; comments on same; email to I. Ferreira;	0.80	RK
	Review Bloom Burton Proposal and Draft Engagement Letter for comments; provide same to R. Kennedy for review;	1.00	IF
May-24-24	Review of revised agreement; emails regarding same; prepare for and attend call;	0.70	RK
	Meet with R. Kennedy and client regarding [REDACTED]; correspondence with client regarding [REDACTED]; finalizing Bloom Burton agreement for execution;	1.40	IF
	Preliminary research for I. Ferreira;	7.60	SN
May-26-24	Research and draft memorandum;	4.80	ALN
May-27-24	Review research prepared by students;	0.40	IF
	Draft and revise memorandum;	3.10	ALN
	Draft memorandum for I. Ferreira;	4.00	SN
May-28-24	Email from and to J. Robinson; call with J. Robinson; [REDACTED];	1.50	RK
	Attend meeting with [REDACTED];	1.00	IF
May-29-24	Prepare for and attend call with Bloom Burton; review of memorandum from I. Ferreira; [REDACTED]; attend call with FTI team; consider issues for [REDACTED]; emails regarding court dates; further emails from clients regarding same;	3.80	RK
	Meet with client and Bloom Burton team regarding [REDACTED]; correspondence received by shareholders and discussion regarding sale process; meeting with [REDACTED];	2.70	IF

correspondence with court requesting a date to approve sale process; meeting with students regarding follow-up research; review court date confirmation form;

	Request from I. Ferreira regarding court time before Justice Osborne for sale approval motion and emails with Commercial List registrar regarding same; review Deloitte and FTI websites for CCAA and receivership proceedings; emails with I. Ferreira regarding parties for court request form and prepare same; circulate to I. Ferreira;	1.00	RGM
	Attending next steps meeting with I. Ferreira;	0.20	ALN
May-30-24	Draft sale process order; draft sale process [REDACTED] [REDACTED] review correspondence from client regarding [REDACTED];	2.40	IF
	Email to Commercial List registrar with form for time on June 24;	0.10	RGM
May-31-24	Continue draft Sale Process; attend meeting with client and Bloom Burton regarding [REDACTED]; summary of meeting to R. Kennedy; finalize draft Sale Process and Order for R. Kennedy review; review Non-Disclosure Agreement received by Bloom Burton for comments; draft Non-Disclosure Agreement;	3.10	IF
	Research the tracing of funds in a constructive trust in preparation for draft memorandum;	4.40	ALN
Jun-03-24	Review summary of next steps prepared by Bloom Burton;	0.10	IF
	Draft memorandum on legal issues;	6.40	ALN
Jun-04-24	Review of research; review of cases; conduct more research; prepare for and attend call with FTI;	5.00	RK
	Telephone call with R. Kennedy and I. Ferreira regarding research; review memorandum and paper on issues;	0.80	SM
	Review research memorandum; correspondence with client regarding [REDACTED]; correspondence with R. Kennedy regarding [REDACTED]; review and assess indemnity agreement dispute with Hansamed; attend meeting with R. Kennedy and S. McGrath regarding [REDACTED]; attend meeting with client regarding [REDACTED]; meet with student regarding further research;	4.20	IF
	Revise memorandum; attending next steps meeting; further research;	6.40	ALN
Jun-05-24	Prepare for and attend call with counsel; emails regarding research; review of article; attend call with Bloom Burton;	2.30	RK

	Emails with R. Kennedy; research regarding issues and email to R. Kennedy regarding same;	1.40	SM
	Review agenda circulated by Bloom Burton; attend meeting with client on weekly status of file; attend meeting with Bloom Burton and Antibe regarding questions for the company ahead of sale process; review further law for research;	3.30	IF
	Research and draft memorandum;	9.40	ALN
Jun-06-24	Emails regarding memorandum and outline; consider issue;	1.10	RK
	Reviewing student email regarding outline for research and revise same; telephone call with student to discuss research;	0.40	SM
	Call with student regarding facts to incorporate into research; finalize Non-Disclosure Agreement for the sale process; review marketing materials circulated by Bloom Burton for sale process;	2.10	IF
	Meet with S. McGrath regarding [REDACTED]; draft memorandum;	6.60	ALN
Jun-07-24	Calls with S. McGrath regarding research; consider issues and further research;	1.10	RK
	Telephone calls with R. Kennedy and student regarding [REDACTED]; review memorandum and revise same;	2.60	SM
	Conduct further research; review and revise legal research memorandum; discussion with student regarding follow-up research; circulate memorandum to S. McGrath for review and comments;	4.20	IF
	Draft memorandum;	6.90	ALN

And to all other necessary telephone communications, attendances and correspondence with respect to the conduct of this matter.

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Rebecca Kennedy	37.50	\$975.00	\$36,562.50
Scott McGrath	5.20	\$900.00	\$4,680.00
Ines Ferreira	46.90	\$550.00	\$25,795.00
Alexandra Nicu (Student)	48.20	\$425.00	\$20,485.00
Daniel Alievsky (Student)	1.50	\$425.00	\$637.50
Sarah Nolasque (Student)	11.60	\$425.00	\$4,930.00
Roxana Manea (Law Clerk)	1.10	\$375.00	\$412.50
<b>Total Fees</b>			<b>\$93,502.50</b>
<b>HST (@ 13%) on Fees</b>			<b>\$12,155.33</b>
<b>Total Fees and HST</b>			<b>\$105,657.83</b>

**DISBURSEMENTS**

3% Administrative Fee	\$2,805.08
<b>Total Taxable Disbursements</b>	<b>\$2,805.08</b>
<b>HST (@ 13%) on Taxable Disbursements</b>	<b>\$364.66</b>
<b>Total *Non-Taxable Disbursements</b>	<b><u>\$0.00</u></b>

**Total Disbursements and HST** **\$3,169.74**

**TOTAL NOW DUE** **\$108,827.57**

**THORNTON GROUT FINNIGAN LLP**


**Per: Rebecca Kennedy**

**E.& O.E. GST/HST #87042 1039 RT0001 \* GST/HST Exempt**

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 33 of The Solicitor's Act, interest will be charged at the rate of 4.00% per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

*Payment can be made to us by:*

- Cheque Payable to Thornton Grout Finnigan LLP or*
- EFT or Wire Transfer to:*

*Account No. 027779-002*

*Transit No. 10532*

*Institution No. 016 (HSBC Bank Canada)*

*Account Name - Thornton Grout Finnigan LLP*

*Address of Bank - 111 Yonge Street, Toronto, Ontario M5C 1W4*

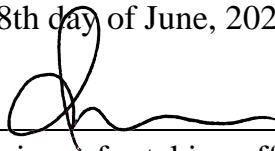
*Name of Bank - HSBC Bank Canada*

*SwiftCode: HKBCCATT*

*Attention: Credit Services Department*

*Please send remittance advice to ychiu@tgf.ca*

This is Exhibit "B" referred to in the  
Affidavit of Rebecca L. Kennedy sworn before me  
this 18th day of June, 2024.



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A Commissioner for taking affidavits

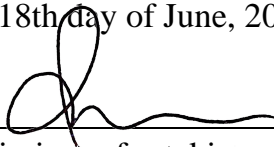


# Exhibit "B"

## Summary of professional fees by invoice for the period April 17, 2024 to June 7, 2024

Invoice No.	Period of Service	Total Hrs	Fees	Disbs.	HST	Invoice Total	Average Rate/Hr
Inv. 40912	For period ended April 21, 2024	2	\$ 1,950.00	\$ 58.50	\$ 261.11	\$ 2,269.61	\$ 975.00
Inv. 40961	For period ended June 7, 2024	152	\$ 93,502.50	\$ 2,805.08	\$ 12,519.99	\$ 108,827.57	\$ 615.15
<b>TOTAL</b>		<b>154.0</b>	<b>\$ 95,452.50</b>	<b>\$ 2,863.58</b>	<b>\$ 12,781.09</b>	<b>\$ 111,097.17</b>	

This is Exhibit "C" referred to in the  
Affidavit of Rebecca L. Kennedy sworn before me  
this 18th day of June, 2024.



---

A Commissioner for taking affidavits

## Exhibit "C"

### Summary of professionals by position for the period April 17, 2024 to June 7, 2024

Legal Professional	Position	Year of Call	Rate/hr 2024	Hrs Billed
Rebecca L. Kennedy	Partner	2009	\$975.00	39.50
Scott McGrath	Partner	2010	\$900.00	5.20
Ines Ferreira	Associate	2021	\$550.00	46.90
Alexandra Nicu	Student	n/a	\$425.00	48.20
Daniel Alievsky	Student	n/a	\$425.00	1.50
Sarah Nolasque	Student	n/a	\$425.00	11.60
Roxana Manea	Law clerk	n/a	\$375.00	1.10
<b>Total</b>				<b>154.00</b>

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT

NUANCE PHARMA LTD.

- and -

ANTIBE THERAPEUTICS INC.

Applicant

Respondent

Court File No. CV-24-00719237-00CL

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

Proceedings commenced at Toronto, Ontario

**AFFIDAVIT OF REBECCA L. KENNEDY**

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200  
Toronto, ON M5K 1K7

**Rebecca L. Kennedy (LSO# 61146S)**  
Tel: (416) 304-0603  
Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

**Ines Ferreira (LSO# 81472A)**  
Tel: (416) 304-0461  
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Lawyers for the Court-appointed Receiver,  
FTI Consulting Canada Inc.

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT**

**NUANCE PHARMA LTD.**

AND

**ANTIBI THERAPEUTICS INC.**

Applicant

Respondent

Court File No.: CV-24-00719237-00CL

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

Proceeding commenced at Toronto

**FIRST REPORT OF  
FTI CONSULTING CANADA INC., IN ITS  
CAPACITY AS COURT-APPOINTED RECEIVER**

**Thornton Grout Finnigan LLP**

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Lawyers for the Receiver

# TAB 3

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

THE HONOURABLE ) MONDAY, THE 24<sup>th</sup>  
 )  
JUSTICE OSBORNE ) DAY OF JUNE, 2024  
 )

**B E T W E E N:**

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE  
COURTS OF JUSTICE ACT**

**ORDER  
(Sale Process Approval)**

**THIS MOTION**, made by FTI Consulting Canada Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") without security, of all of the present and future assets, undertakings and real and personal property of Antibe Therapeutics Inc. ("**Antibe**"), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report (including the appendices thereto) of the Receiver dated June 18, 2024 (the "**First Report**"), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the Service List, as appears from the affidavit of service, sworn and filed,

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record of the Receiver is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them in the Sale Process attached at Schedule “A” hereto (the “**Sale Process**”).

## **APPROVAL OF THE SALE PROCESS**

3. **THIS COURT ORDERS** that the Sale Process and the procedures contemplated therein be and are hereby approved, subject to such non-material and permissible amendments as may be made by the Receiver.
4. **THIS COURT ORDERS** that Bloom Burton Securities Inc. is hereby appointed as financial advisor (the “**Financial Advisor**”) to conduct the Sale Process with the direct oversight of the Receiver.
5. **THIS COURT ORDERS** that the Receiver and the Financial Advisor are authorized and directed to take such steps as they deem necessary or advisable to carry out and perform their obligations under the Sale Process, subject to the prior approval of this Court being obtained before the completion of any transaction(s) under the Sale Process.
6. **THIS COURT ORDERS** that the Receiver and the Financial Advisor are authorized to continue the solicitation efforts recently initiated on June 11, 2024 under the Sale Process to solicit interest in the opportunity for a sale of all or part of the Debtors’ assets, including, but not limited to, the intellectual property rights and interests of the Debtor (the “**Property**”).
7. **THIS COURT ORDERS** that the Receiver, the Financial Advisor and its respective affiliates, partners, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or



liabilities result from the gross negligence or willful misconduct of the Receiver, as determined by the Court.

8. **THIS COURT ORDERS** that in overseeing the Sale Process, the Receiver and the Financial Advisor shall have all benefits and protections granted to it under any order of this Court in the within proceeding.

## **REGULATORY COMPLIANCE**

9. **THIS COURT ORDERS** that the Receiver, and its counsel, be and is hereby authorized but not obligated, to serve or distribute this Order, any other materials, orders, communication, correspondence or other information as may be necessary or desirable in connection with the Sale Process to any Person or interested party that the Receiver consider appropriate. For greater certainty, any such distribution, communication or correspondence shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, the Receiver is hereby authorized and permitted to disclose and transfer to each potential bidder (collectively, the “**Potential Bidders**”) and to their advisors, if requested by such Potential Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Debtors’ records pertaining to its past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Property (“**Sale**”). Each Potential Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of a Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Property acquired pursuant to the Sale in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **GENERAL**

11. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

12. **THIS COURT ORDERS** that the Receiver 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.

13. **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. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee and its agents as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. Toronto Time on the date of this Order and is enforceable without the need for entry and filing.

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**SCHEDULE "A"**

## Sale Process

### ANTIBE THERAPEUTICS INC.

#### Introduction

1. On April 9, 2024, Antibe Therapeutics Inc. (“**Antibe**” or the “**Debtor**”) made an application pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for creditor protection (the “**CCAA Proceedings**”). On the same day, the Court granted an Initial Order which, among other things: (i) granted a stay of proceedings up to and including April 18, 2024; and (ii) appointed Deloitte Restructuring Inc. as Court-appointed monitor of the business and financial affairs of Antibe (in such capacity, the “**Monitor**”).
2. On April 15, 2024, Nuance Pharma Ltd. (“**Nuance**”), responded with a cross-application objecting to the CCAA proceedings.
3. On April 22, 2024, the Honourable Justice Osborne issued an endorsement appointing FTI Consulting Canada Inc. as receiver and manager (the “**Receiver**”), without security, of the assets, undertakings and properties of Antibe Therapeutics Inc. (“**Antibe**” or the “**Debtor**”). The appointment was confirmed to be effective pursuant to an order of the Court issued on April 30, 2024 (the “**Receivership Order**”).
4. On June 24, 2024, pursuant to an order (the “**Sale Process Order**”) of the Court, the Receiver was, among other things, authorized to continue solicitation efforts and conduct a sale process in respect of the assets of the Debtor (the “**Sale Process**”). Pursuant to the Sale Process Order, the Receiver has engaged and the Court has appointed Bloom Burton Securities Inc. (the “**Financial Advisor**”) to conduct the Sale Process described herein with direct oversight of the Receiver.

#### Opportunity

5. The Sale Process is intended to solicit interest in opportunities for a sale of all or part of the Debtor’s assets (the “**Opportunity**”). The Opportunity may include one or more sales of all or substantially all of the Debtor’s assets (the “**Property**”) (each, a “**Transaction**”).
6. This document describes the sale process (the “**Sale Process**”) by which the Property will be solicited, including the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a “**Person**”) may gain access to, or continue to have access to, due diligence materials concerning the Debtor and the Property, how bids will be submitted to and dealt with by the Receiver, and how Court approval will be obtained in respect of a Transaction.
7. The Sale Process contemplates a two-stage process that requires parties to submit letters of interest by the Phase 1 Bid Deadline and binding offers by the Phase 2 Bid Deadline (as defined below).

8. Except to the extent otherwise set forth in a definitive sale agreement with a successful bidder, any Transaction will be on an “asis, where-is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, the Debtor, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Debtor in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.
9. In the Sale Process, (i) “**Business Day**” means any day (other than Saturday or Sunday) that banks are open for business in Toronto, Ontario. If any deadline date referred to in the Sale Process falls on a day that is not a Business Day, then such date shall be extended until the next Business Day; and (ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase, “without limitation”.

### **Timeline**

10. The following table sets out the key milestones under the Sale Process:

<b>Milestone</b>	<b>Timeline</b>	<b>Targeted Deadline</b>
Commencement date		<b>June 11, 2024</b>
Preparation of Sale Process materials: (i) Teaser, Buyer list, NDA	<b>Completed</b>	<b>June 11, 2024</b>
(ii) Investment Memorandum, Buyer list, Notices for trade publication, NDA, populate EDR	<b>10 days</b>	<b>June 21, 2024</b>
Phase 1 Bid Deadline	<b>50 days</b>	<b>July 31, 2024</b>
Assessment of Phase 1 Bids	<b>9 days</b>	<b>August 9, 2024</b>
Phase 2 Bid Deadline	<b>25 days</b>	<b>September 3, 2024</b>
Auction Date (if applicable)	<b>7 days</b>	<b>September 11, 2024</b>
Finalize Transaction agreement	<b>7 days</b>	<b>September 11, 2024</b>
Sale Approval Motion (as defined below) in Court	<b>As soon as reasonably practicable</b>	<b>September 20, 2024 (outside date)</b>
Closing of the Transaction	<b>As soon as reasonably practicable</b>	<b>September 27, 2024 (outside date)</b>

11. The dates set out in the Sale Process may be extended by either: (i) further order of the Court; or (ii) the Receiver.

### **Solicitation of Interest: Notice of the Sale Process**

12. The Financial Advisor, with the oversight and assistance from the Receiver and input from the senior management of Antibe, prepared a list of potential bidders, including (i) parties

that operate in a similar industry, and (ii) local and international strategic and financial parties who may be interested in a Transaction pursuant to the Sale Process (collectively, “**Known Potential Bidders**”). The Financial Advisor with oversight from the Receiver also prepared a short-form teaser that provided an overview of the opportunity (the “**Teaser**”). On June 11, 2024, the Receiver and Financial Advisor commenced solicitation efforts to the Known Potential Bidders and sent the Teaser either electronically or by physical mail depending on the recipient.

13. The Receiver’s legal counsel, Thornton Grout Finnigan LLP, also prepared a form of non-disclosure agreement (an “**NDA**”) to be utilized by interested parties to access confidential information.
14. As soon as reasonably practicable, the Receiver with the assistance of the Financial Advisor and its legal counsel, Thornton Group Finnigan LLP, as required will:
  - a. arrange for a notice of the Sale Process (and such other relevant information which the Receiver considers appropriate) (the “**Notice**”) to be published in in *The Globe and Mail* (National Edition), *Insolvency Insider*, the Receiver’s website, and any other newspaper or journal or industry website as the Receiver considers appropriate, if any; and
  - b. prepare a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the Court-approved Sale Process, and inviting recipients of the Teaser and Teaser Letter to express their interest pursuant to the Sale Process.
15. The Receiver and the Financial Advisor will send the Teaser, Teaser Letter and NDA to each Known Potential Bidder and to any other Person who requests a copy of the Teaser Letter and NDA or who is identified to the Receiver as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

### **Potential Bidders and Due Diligence Materials**

16. Any party who wishes to participate in the Sale Process (a “**Potential Bidder**”) must provide an executed NDA to the Receiver, and which shall inure to the benefit of any purchaser of the Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
17. The Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Potential Bidder who has signed and delivered an NDA to the Receiver and provided information as to their financial ability, in the Receiver’s sole discretion, to close a transaction, such access to due diligence material and information relating to the Property as the Receiver deems appropriate. Due diligence shall include access to an electronic data room (“**EDR**”) containing information about the Debtor and the Opportunity, and may also include management presentations, confidential information memorandums, on-site inspections, and other matters which a Potential Bidder may reasonably request and as to which the Receiver may agree. The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders

and the manner in which such requests must be communicated. The Receiver will not be obligated to furnish any information relating to the Property to any person other than to Potential Bidders. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the Sale Process, the Opportunity or the Property.

18. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property in connection with their participation in the Sale Process and any Transaction they enter into.

### **Phase 1: Non-Binding LOI**

19. Potential Bidders that wish to submit a bid to purchase the Property (a “**Phase 1 Bidder**”) shall submit a non-binding letter of intent (an “**LOI**”) that complies with all of the following requirements to the Receiver’s counsel at the address specified in Schedule “1” hereto (including by e-mail), so as to be received by them not later than **1:00 PM (EST) on July 31, 2024** (the “**Phase 1 Bid Deadline**”) or as may be modified in the Bid process letter that may be circulated by the Receiver to Potential Bidders (each LOI that meets the requirements set out below, a “**Qualified Phase 1 Bid**”):

- a. the LOI must be duly executed by all required parties;
- b. the LOI must be received by the Phase 1 Bid Deadline;
- c. the LOI identifies the Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Phase 1 Bidder for all purposes regarding the contemplated transaction;
- d. the LOI clearly indicates the Property, either in part or all or substantially all, that the Phase 1 Bidder is seeking to acquire;
- e. the LOI contains such other information as may be reasonably requested by the Receiver;
- f. the LOI identifies the following:
  - i. the proposed purchase price in Canadian dollars and a description of any non-cash consideration, including details of any liabilities to be assumed by the Phase 1 Bidder and key assumptions supporting the valuation;
  - ii. a description of the Property that is expected to be subject to and included in the transaction, and any of the Property expected to be excluded from the transaction;
  - iii. a specific indication of the financial capability of the Phase 1 Bidder and the expected structure and financing of the transaction;

- iv. a description of the conditions and approvals required to complete the closing of the transaction;
- v. a description of those liabilities and obligations (including operating liabilities) which the Phase 1 Bidder intends to assume and which such liabilities and obligations it does not intend to assume, if any; and
- vi. any other terms or conditions of the LOI that the Phase 1 Bidder believes are material to the transaction.

20. The Receiver may waive strict compliance with any one or more of the requirements above.

### **Evaluation of Competing Phase 1 Bids**

- 21. The Receiver and the Financial Advisor may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Satisfactory Bid (as defined below).
- 22. Following the Phase 1 Bid Deadline, the Receiver and the Financial Advisor will determine the LOIs that are selected as the most favourable Phase 1 Qualified Bids, which will then be deemed “**Phase 1 Satisfactory Bids**”.
- 23. Phase 1 Bidders whose LOIs are selected as Phase 1 Satisfactory Bidders will be determined as being Phase 2 Qualified Bidders. The Receiver will notify each Phase 1 Bidder in writing as to whether it was determined to be a Phase 2 Qualified Bidder no later than five (5) business days following the Phase 1 Bid Deadline, or at such later time as the Receiver, in consultation with Financial Advisor, deems appropriate, acting reasonably.

### **Phase 2: Formal Binding Offers**

- 24. Phase 2 Qualified Bidders that wish to make a formal offer to purchase the Property shall submit a binding offer (a “**Bid**”) that complies with all of the following requirements to the Receiver’s counsel at the address specified in Schedule “1” hereto (including by e-mail), so as to be received by them not later than **1:00 PM (EST) on September 3, 2024** or as may be modified in the Bid process letter that may be circulated by the Receiver or Financial Advisor to Phase 2 Qualified Bidders (the “**Phase 2 Bid Deadline**”):
  - a. the Bid must be a binding offer to acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”);
  - b. the Bid (either individually or in combination with other bids that make up one bid) is an offer to purchase the Property and is consistent with any necessary terms and conditions established by the Receiver and communicated to Phase 2 Qualified Bidders;



- c. the Bid includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- d. the Bid includes duly authorized and executed transaction agreements, which provide:
  - i. the purchase price (the "**Purchase Price**") for the Sale Proposal;
  - ii. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - iii. a description of the conditions and approvals required to complete the closing of the transaction;
  - iv. a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
  - v. any other terms or conditions of the Bid that the Bid Phase 2 Qualified Bidder believes are material to the transaction; and
  - vi. any and all exhibits and schedules thereto;
- e. the Bid is accompanied by a deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Receiver), in an amount equal to ten percent (10%) of the Purchase Price, to be held and dealt with in accordance with this Sale Process;
- f. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Receiver to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities, and general wherewithal to consummate the proposed transaction;
- g. the Bid is not conditioned on (i) the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, or (ii) obtaining financing. Any conditions and approvals required to complete the Sale Proposal will be included in the transaction documents;
- h. the Bid fully discloses the identity of each entity that will be entering into the transaction, or that is otherwise participating or benefiting from such bid;
- i. the Bid includes acknowledgements and representations of the Phase 2 Qualified Bidder that the Phase 2 Qualified Bidder:
  - i. is completing the Transaction on an "as-is, where-is" basis;

- ii. has had an opportunity to conduct any and all due diligence regarding the Property and the Debtor prior to making its Bid;
  - iii. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
  - iv. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the Debtor or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
- j. the Bid is received by the Phase 2 Bid Deadline; and
  - k. the Bid contemplates closing the Transaction set out therein in an expedient manner following the granting of an order by the Court approving the same.
25. Following the Bid Deadline, the Receiver and the Financial Advisor will assess the Bids received. The Receiver, in consultation with the Financial Advisor, will designate the most competitive bids that comply with the foregoing requirements to be “**Phase 2 Qualified Bids**”. No Bids received shall be deemed not to be Phase 2 Qualified Bids without the approval of the Receiver. Only Phase 2 Qualified Bidders whose bids have been designated as Phase 2 Qualified Bids are eligible to become the Successful Bidder(s).
26. The Receiver may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bids to be a Phase 2 Qualified Bid. The Receiver will be under no obligation to negotiate identical terms with, or extend identical terms to, each Bidder.
27. The Receiver shall notify each Bidder in writing as to whether its Bid constituted a Phase 2 Qualified Bid within two (2) business days of the Phase 2 Bid Deadline, or at such later time as the Receiver deems appropriate.
28. The Receiver may aggregate separate Bids from unaffiliated Phase 2 Qualified Bidders to create one Phase 2 Qualified Bid.

### **Evaluation of Competing Bids**

29. A Phase 2 Qualified Bid will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the net value provided by such bid, (ii) the identity, circumstances and ability of the Bidder to successfully complete such Transaction(s), (iii) the proposed Transaction documents, (iv) the assets included or excluded from the bid, (v) any related restructuring costs, (vi) the likelihood and timing of consummating such Transaction, each as determined by the Receiver and (vii) any other factor deemed relevant by the Receiver.
30. The Receiver reserves the right to negotiate with any bidder with respect to their Phase 2 Qualified Bid if the Receiver determines such negotiations to be in the best interest of the Sale Process.

## **Auction**

31. If the Receiver receives at least two Phase 2 Qualified Bids and determines, in consultation with the Financial Advisor, that they are competitive, the Receiver may proceed to conduct and administer an Auction in accordance with the terms of this Sale Process (the “**Auction**”). Instructions to participate in the Auction, which will take place via video conferencing, or in person, as determined by the Receiver, and will be provided to Qualified Parties (as defined below) not less than 48 hours prior to the Auction.
32. Only parties that provided a Phase 2 Qualified Bid by the Phase 2 Bid Deadline, as confirmed by the Receiver (collectively, the “**Qualified Parties**”), shall be eligible to participate in any Auction. No later than 1:00 p.m. (EST) on the day prior to any Auction, each Qualified Party must inform the Receiver whether it intends to participate in the Auction. The Receiver will promptly thereafter will have the option to inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction.

## **Auction Procedure**

33. If the Receiver is to conduct an Auction, the Auction shall be governed by the following procedures:
  - a. **Participation at the Auction.** Only the Qualified Parties, the Receiver and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Receiver shall provide the selected Qualified Parties with the details of the lead bid by 1:00 PM (EST) no later than five (5) days after the Phase 2 Bid Deadline. Each Phase 2 Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 1:00 PM (EST) on the Business Day prior to the Auction;
  - b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid;
  - c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Receiver, in consultation with the **Financial** Advisor (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Receiver’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of \$100,000;
  - d. **Bidding Disclosure.** The Auction shall be conducted such that all bids may be made and received in one group video-conference or otherwise, on an open basis, and all Qualified Parties may be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party may be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully

- disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Receiver, in its discretion, may establish separate video conference rooms to permit interim discussions between the Receiver and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each **participating** Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s);
  - f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has **concluded**; and
  - g. **Auction Procedures.** The Receiver shall be at liberty to revise those rules set out herein or **set** additional procedural rules prior to or at the Auction as it sees fit.

### **Selection of Successful Bid**

34. If the Receiver elects to conduct an Auction, before the conclusion of the Auction, the Receiver will:
- a. review and evaluate each Qualified Bid, considering the factors set out in paragraph 28 and any other factor that the Receiver may reasonably deem relevant, provided that each Qualified Bid may be negotiated among the Receiver, the Financial Advisor and the Qualified Bidder, and may be amended, modified or varied to improve such Qualified Bid as a result of such negotiations; and
  - b. identify the highest or otherwise best bid received at the Auction (the “**Successful Bid**” and the Qualified Party making such bid, the “**Successful Party**”).
35. The Receiver reserves the right to select a Successful Bid without the requirement to perform an Auction if, in the Receiver’s opinion, an Auction will not lead to a better bid as part of the Sale Process.
36. The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the Receiver, subject to the milestones set forth in paragraph 10.

### **Sale Approval Motion Hearing**

37. At the hearing of the motion to approve any transaction with a Successful Party (the “**Sale Approval Motion**”), the Receiver shall seek, among other things, approval from the Court to consummate any Successful Bid. All Qualified Bids other than the Successful Bid, if any, shall be deemed to be rejected by the Receiver on and as of the date of approval of the Successful Bid by the Court.

## **Confidentiality and Access to Information**

38. All discussions regarding a Bid should be directed through the Receiver and the Financial Advisor. Under no circumstances should the former management of the Debtor be contacted directly without the prior consent of the Receiver or the Financial Advisor. Any such unauthorized contact or communication could result in the exclusion of the interested party from the Sale Process.
39. Participants and prospective participants in the Sale Process shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bids, the details of any Bids submitted or the details of any confidential discussions or correspondence between the Receiver and such other bidders or Potential Bidders in connection with the Sale Process, except to the extent the Receiver, with the consent of the applicable participants, seeks to combine separate bids from Qualified Bidders.

## **Supervision of the Sale Process**

40. The Receiver shall oversee, and the Financial Advisor shall conduct, the Sale Process in all respects, and, without limitation to that supervisory role, the Receiver will participate in the Sale Process in the manner set out in this Sale Process and the Sale Process Order and any other orders of the Court and is entitled to receive all information in relation to the Sale Process.
41. This Sale Process does not and will not be interpreted to create any contractual or other legal relationship between the Receiver and any Potential Bidder, any Qualified Bidder or any other Person, other than as specifically set forth in a definitive agreement that may be entered into with the Receiver.
42. Without limiting the preceding paragraph, the Receiver and the Financial Advisor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Bidder, the Successful Bidder, the Debtor, or any other creditor or other stakeholder of the Debtor, for any act or omission related to the process contemplated by this Sale Process Procedure, except to the extent such act or omission is the result from gross negligence or willful misconduct of the Receiver or the Financial Advisor. By submitting a bid, each Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver or the Financial Advisor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or willful misconduct of the Receiver or the Financial Advisor.
43. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a Transaction.
44. The Receiver shall have the right to modify the Sale Process (including, without limitation, pursuant to the Bid process letter) if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the Sale Process; provided that the Service List in these proceedings shall be advised of any substantive modification to the procedures set forth herein.

## **Deposits**

45. All Deposits received pursuant to this Sale Process shall be held in trust by the Receiver. The Receiver shall hold Deposits paid by each of the Bidders in accordance with the terms outlined in this Sale Process. In the event that a Deposit is paid pursuant to this Sale Process and the Receiver elects not to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such Deposit, the Receiver shall return the Deposit to that Person. In the event that the Successful Bidder defaults in the payment or performance of any obligations owed to the Receiver pursuant to any Final Agreement, the Deposit paid by the Successful Bidder, as applicable, shall be forfeited as liquidated damages and not as a penalty.

**Schedule “1”**

**Address of Receiver**

**To the Receiver:**

**FTI Consulting Canada Inc.**

TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attention: Jim Robinson and Jonathan Joffe

Email: [jim.robinson@fticonsulting.com](mailto:jim.robinson@fticonsulting.com)  
[jonathan.joffe@fticonsulting.com](mailto:jonathan.joffe@fticonsulting.com)

with a copy to:

**Thornton Grout Finnigan LLP**

Suite 3200, 100 Wellington Street West  
P.O. Box 329, Toronto-Dominion Centre  
Toronto, Ontario M5K 1K7

Attention: Rebecca Kennedy

Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT**

**NUANCE PHARMA LTD.**

AND

**ANTIBE THERAPEUTICS INC.**

Applicant

Respondent

Court File No.: CV-24-00719237-00CL

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

Proceeding commenced at Toronto

**SALE PROCESS ORDER**

**Thornton Grout Finnigan LLP**  
Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON M5K 1K7

**Rebecca L. Kennedy (LSO# 61146S)**  
Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

**Ines Ferreira (LSO # 81472A)**  
Email: [iferreira@tgf.ca](mailto:iferreira@tgf.ca)

Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Receiver



# TAB 4

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

THE HONOURABLE ) MONDAY, THE 24<sup>th</sup>  
 )  
JUSTICE OSBORNE ) DAY OF JUNE, 2024  
 )

**B E T W E E N:**

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE  
COURTS OF JUSTICE ACT**

**CLAIMS PROCEDURE ORDER**

**THIS MOTION**, made by FTI Consulting Canada Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") without security, of all of the present and future assets, undertakings and real and personal property of Antibe Therapeutics Inc. ("**Antibe**"), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the Receiver dated June 18, 2024, the First Report of the Receiver dated June 18, 2024 (including the appendices thereto, the "**First Report**"), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the Service List, as appears from the affidavit of service, sworn and filed,

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**DEFINITIONS AND INTERPRETATION**

2. **THIS COURT ORDERS** that capitalized terms used in this Order shall have the meanings ascribed to them in Schedule “A” to this Order.
3. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day, unless otherwise indicated herein.
4. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”.
5. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

**GENERAL PROVISIONS**

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to use its reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion and execution of such forms, or request any further documentation from a Person that the Receiver may require in order to enable the Receiver to determine the validity or quantum of a Claim.
7. **THIS COURT ORDERS** that if any Claim arose in a currency other than Canadian Dollars, then the Person making the Claim shall complete its Proof of Claim and indicate the amount of the Claim in such currency, rather than in Canadian Dollars or any other currency. Where no currency is indicated, the Claim shall be presumed to be in Canadian

Dollars. The Receiver shall subsequently calculate the amount of such Claim in Canadian Dollars, using the Bank of Canada Canadian Dollar Daily Exchange Rate on April 22, 2024.

8. **THIS COURT ORDERS** that the form and substance of each of the Notice to Claimants, Proof of Claim, Notice of Revision or Disallowance and Dispute Notice, substantially in the forms attached as Schedules “B”, “C”, “D” and “E”, respectively, to this Order are hereby approved. Notwithstanding the foregoing, the Receiver may from time to time make changes to such forms as the Receiver considers necessary or advisable.

### **RECEIVER’S ROLE**

9. **THIS COURT ORDERS** that the Receiver, in addition to its prescribed rights, duties, responsibilities and obligations under the Receivership Order, shall take all actions and fulfill any other roles as are authorized by this Order or incidental thereto, including the determination of Claims and referral of any Claim to the Court.
10. **THIS COURT ORDERS** that the Receiver may attempt to resolve the classification and amount of any Claim with the Claimant on a consensual basis prior to accepting, revising or disallowing such Claim.
11. **THIS COURT ORDERS** that: (i) in carrying out the terms of this Order, the Receiver shall have all of the protections given to it by the Receivership Order and this Order, (ii) the Receiver shall incur no liability or obligation as a result of carrying out the provisions of this Order, except for claims for gross negligence or wilful misconduct, (iii) the Receiver shall be entitled to rely on the books and records of Antibe, all without further independent investigation, and (iv) the Receiver shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information or in any information provided by any Claimant, except for claims for gross negligence or wilful misconduct.

## NOTICE TO CLAIMANTS

12. **THIS COURT ORDERS** that:

- (a) the Receiver shall, no later than five (5) Business Days following the date granting this Order, post a copy of this Order, the Notice to Claimants, a blank proof of claim form, and an instruction letter (the “**Claims Package**”) on the Receiver’s Website at: <http://cfcanada.fticonsulting.com/antibe/>;
- (b) as soon as practicable after the granting of this Order, the Receiver shall, for one business day, publish the Notice to Claimants in the *Globe and Mail* (National Edition); and
- (c) the Receiver shall deliver, as soon as reasonably practicable following a request, a Claims Package to any Person claiming to be a creditor of Antibe, provided such request is received before the Claims Bar Date.

13. **THIS COURT ORDERS** that, except as specifically provided for in this Order, the Receiver is not under any obligation to provide notice of this Order to any Person having or asserting a Claim, and all Persons shall be bound by the Claims Bar Date, this Order, and any notices published pursuant to paragraphs 12(a) and (b) of this Order, regardless of whether or not they received actual notice, and any steps taken in respect of any Claim, in accordance with this Order.

14. **THIS COURT ORDERS** that neither: (i) the reference to a purported Claim as a “Claim” or a purported Claimant as a “Claimant” in this Order, nor (ii) the delivery of a Proof of Claim by the Receiver to a Person, shall constitute an admission by the Receiver or Antibe of any obligation of Antibe to any Person.

## PROOFS OF CLAIM

15. **THIS COURT ORDERS** that every Person with a Claim shall file with the Receiver by email, prepaid ordinary mail, courier, personal delivery, or telefax on or before the Claims Bar Date, a Proof of Claim together with any supporting documentation.

**CLAIMS BAR DATE**

16. **THIS COURT ORDERS** that, subject to further order of this Court, any Person who does not deliver a Proof of Claim, together with supporting documentation, on or before the Claims Bar Date: (a) shall be and is hereby forever barred from making or enforcing such Claim, and all such Claims shall be forever extinguished, (b) shall not be entitled to receive any distribution pursuant to the Claims Process or further Order of this Court, and (c) shall not be entitled to any further notice in the Claims Process, and shall not be entitled to participate as a Claimant in respect of such Claim.
17. **THIS COURT ORDERS** that, subject to further order of the Court, the Claims Bar Date shall be 1:00 p.m. (Toronto time) on August 30, 2024.
18. **THIS COURT ORDERS** that each Person required by this Order to file a Proof of Claim shall include any and all Claims it asserts against Antibe in a single Proof of Claim.

**DETERMINATION OF CLAIMS**

19. **THIS COURT ORDERS** that, subject to the terms of this Order, the Receiver shall review all Proof of Claims filed on or before the Claims Bar Date and may accept, revise, or disallow (in whole or in part) the amount, or any other aspect of, a Claim asserted in a Proof of Claim. At any time, the Receiver may: (i) request additional information with respect to any Claim, (ii) request that the Claimant file a revised Proof of Claim, (iii) attempt to consensually resolve the amount or any other aspect of a Claim, or (iv) admit, revise, or disallow a Claim.
20. **THIS COURT ORDERS** that where a Claim is revised or disallowed pursuant to paragraph 19 of this Order, the Receiver shall deliver to the Claimant a Notice of Revision or Disallowance and attach the form of Dispute Notice.
21. **THIS COURT ORDERS** that where a Claim has been accepted or admitted by the Receiver, such Claim shall constitute a Proven Claim for the purposes of the Claims Process. The acceptance of any Claim or other determination of same in accordance with this Order, in whole or in part, shall not constitute an admission of any fact, thing,

obligation, or quantum of any Claim by any Person, save and except in the context of the Claims Process.

### **DISPUTE NOTICE**

22. **THIS COURT ORDERS** that a Claimant who intends to dispute a Notice of Revision or Disallowance shall deliver a Dispute Notice to the Receiver so that it is received by the Receiver no later than fourteen (14) calendar days after such Claimant is deemed to have received the Notice of Revision or Disallowance in accordance with paragraph 30 of this Order, or such longer period as may be agreed to by the Receiver in writing. The receipt of a Dispute Notice by the Receiver within the fourteen (14) calendar day period specified in this paragraph shall constitute an application to have the amount of such Claim determined pursuant to the claims process provided for in this Order.
23. **THIS COURT ORDERS** that where a Claimant fails to deliver a Dispute Notice in accordance with paragraph 22 of this Order, the amount of such Claimant's Claim shall be deemed to be as set out in the Notice of Revision or Disallowance. Such amount, if any, shall constitute such Claimant's Proven Claim, and the balance of such Claimant's Claim, if any, shall be forever barred and extinguished.
24. **THIS COURT ORDERS** that where a Claim has been revised or disallowed pursuant to paragraph 20 of this Order, the revised or disallowed Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the process set out in this Order or as otherwise ordered by the Court.

### **RESOLUTION OF CLAIMS**

25. **THIS COURT ORDERS** that as soon as practicable after a Dispute Notice is received by the Receiver in accordance with this Order, the Receiver may attempt to resolve and settle a disputed Claim with the Claimant.
26. **THIS COURT ORDERS** that in the event that the Receiver is unable to consensually resolve any Dispute Notices within a reasonable time period, the Receiver shall either: (i) file a report with the Court summarizing such Dispute Notices and shall bring a motion for

advice and directions from the Court in respect of the resolution of the outstanding Dispute Notices; or (ii) refer the matter to a Claims Officer to adjudicate a Disputed Claim.

### **CLAIMS OFFICER(S)**

27. **THIS COURT ORDERS** that the selection of any Claims Officer to adjudicate a Disputed Claim shall be subject to mutual agreement between the affected Claimant and the Receiver and if such agreement is not possible, Court approval. The Receiver is hereby authorized to bring a motion to seek an order of the Court appointing a Claims Officer in respect of any and all disputed Claims. The Receiver shall pay the reasonable professional fees and disbursements of each Claims Officer on presentation and acceptance of invoices from time to time.
28. **THIS COURT ORDERS** that, subject to further order of the Court, the Claims Officer shall determine the Status and/or amount of each Disputed Claim and in doing so, the Claims Officer shall be empowered to determine the process in which evidence may be brought before him or her as well as any other procedural matters which may arise in respect of the determination of any Claim. In addition, the Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before the Claims Officer shall be paid.
29. **THIS COURT ORDERS** that the Receiver or the Claimant may appeal the Claims Officer's determination to this Court by serving upon the other (with a copy to the Receiver) and filing with this Court, within ten (10) calendar days of notification of the Claims Officer's determination of such Disputed Claim, a notice of motion returnable on a date to be fixed by this Court. If a notice of motion is not filed within such period, then the Claims Officer's determination shall be deemed to be final and binding.

### **NOTICE OF TRANSFEREES**

30. **THIS COURT ORDERS** that the Receiver shall not be obligated to send notice to or otherwise deal with a transferee or assignee of a Claim as the Claimant in respect thereof unless and until: (i) actual written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the



Receiver, and (ii) the Receiver has acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for all purposes hereof constitute the “Claimant” in respect of such Claim. Any such transferee or assignee of a Claim, and such Claim, shall be bound by all notices given or steps taken in respect of such Claim, in accordance with this Order prior to the written acknowledgement by the Receiver of such transfer or assignment.

31. **THIS COURT ORDERS** that if the holder of a Claim has transferred or assigned the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim, and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment, and the Receiver shall not be bound to acknowledge or recognize any such transfer or assignment and shall be entitled to send notice to and to otherwise deal with such Claim only as a whole, and then only to and with the Person last holding such Claim in whole as the Claimant in respect of such Claim. Provided that a transfer or assignment of the Claim has taken place in accordance with this Order and the Receiver has acknowledged in writing such transfer or assignment, the Person last holding such Claim in whole as the Claimant in respect of such Claim may by notice to the Receiver, in writing, direct that subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and, in such event, such Claimant, transferee or assignee of the Claim shall be bound by any notices given or steps taken in respect of such Claim by or with respect to such Person in accordance with this Order.

#### **DIRECTIONS**

32. **THIS COURT ORDERS** that the Receiver or any other Person with an economic interest in this Claims Process may at any time, and with such notice as the Court may require, seek directions from the Court with respect to this Order and the claims process set out herein, including the forms attached as Schedules hereto.

**SERVICE AND NOTICE**

33. **THIS COURT ORDERS** that the Receiver may, unless otherwise specified by this Order, serve and deliver the Claims Package, and any letters, notices or other documents to Claimants, or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to such Persons (with copies to their counsel, if applicable) at the last address shown in the books and records of Antibe or set out in such Person's Proof of Claim. Any such service or notice by courier, personal delivery or electronic or digital transmission shall be deemed to have been received: (i) if sent by ordinary mail, on the third (3rd) Business Day after mailing within Ontario, the fifth (5th) Business Day after mailing within Canada (other than within Ontario), and the tenth (10th) Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by electronic or digital transmission by 5:00 p.m. on a Business Day, on such Business Day, and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day. Notwithstanding anything to the contrary in this Order, Notices of Revision or Disallowance shall be sent only by (i) electronic or digital transmission to a fax number or email address that has been provided in writing by the Claimant or (ii) courier.
34. **THIS COURT ORDERS** that any notice or other communication (including Proofs of Claim and Dispute Notices) to be given under this Order by any Person to the Receiver shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid registered mail, courier, personal delivery or electronic or digital transmission addressed to:

**FTI Consulting Canada Inc.**  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attn: Jim Robinson and Jonathan Joffe  
Email: [antibe@fticonsulting.com](mailto:antibe@fticonsulting.com)

Any such notice or other communication by a Person shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day, or if delivered outside of a normal business hours, the next Business Day.

35. **THIS COURT ORDERS** that if during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further Order of the Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or electronic or digital transmission in accordance with this Order.

#### MISCELLANEOUS

36. **THIS COURT ORDERS** that notwithstanding any other provision of this Order, the solicitation of Proofs of Claim, and the filing by a Person of any Proof of Claim, shall not, for that reason only, grant any Person any standing in the Receivership Proceedings or rights to a distribution.
37. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.
38. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
-

**SCHEDULE “A”  
DEFINED TERMS**

- (a) **“Business Day”** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario, Canada;
- (b) **“Claim”** means any right or claim of any Person that may be asserted or made in whole or in part against Antibe, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever (including any claim by a Director or Officer against the Applicant for contribution and/or indemnity arising from any Directors or Officers Claim (**“D&O Claim”**) relating to the time period prior to the Filing Date), and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including, without limitation, any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, including, without limiting the foregoing, any right or claim of a current or former employee of Antibe, unionized or non-unionized, or any tax claim;
- (c) **“Claims Process”** means the procedures outlined in this Order, including the Schedules to this Order;

- (d) “**Claims Bar Date**” means 1:00 p.m. (Toronto time) on **August 30, 2024**, or such later date as the Court may order or the Receiver may determine under the authority of this Order;
- (e) “**Claims Officer**” means one or more individuals selected or appointed in accordance with this Claims Process Order to act as a claims officer for the purposes of this Claims Process Order;
- (f) “**Claimant**” means any Person asserting a Claim, and includes the transferee or assignee of a Claim, transferred and recognized as a Claimant in accordance with paragraphs 26 to 27 hereof, or a trustee, executor, or other Person acting on behalf of or through such Person;
- (g) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (h) “**Disputed Claim**” means a Claim that is validly disputed in accordance with this Claims Process Order and which remains subject to adjudication in accordance with this Claims Process Order;
- (i) “**Dispute Notice**” means a written notice delivered to the Receiver by a Person who has received a Notice of Revision or Disallowance of that Person’s intention to dispute such Notice of Revision or Disallowance and the reasons for the dispute, substantially in the form attached as Schedule “**E**” hereto;
- (j) “**Filing Date**” means the date on which an application for the Receivership was made and effective pursuant to the Receivership Order.
- (k) “**Notice of Revision or Disallowance**” means a notice informing a Claimant that the Receiver has revised or disallowed all or part of such Claimant’s Claim set out in such Claimant’s Proof of Claim, substantially in the form attached as Schedule “**D**” hereto;
- (l) “**Person**” is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership,

association, trust, unincorporated organization, joint venture, government authority or any agency, regulatory body, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity;

- (m) **“Proof of Claim”** means the proof of claim to be completed and filed by a Person setting forth a Claim and which shall include all supporting documentation in respect of such Claim, substantially in the form attached as Schedule “C” hereto;
- (n) **“Proven Claim”** means the amount of a Claimant’s Claim, as finally determined under the Claims Process;
- (o) **“Receivership Order”** means the order of the Honourable Justice Osborne dated April 30, 2024, appointing the Receiver and granting the Receiver certain powers effective retroactively as of April 22, 2024;
- (p) **“Receivership Proceedings”** means the proceedings commenced pursuant to the Receivership Order on application by Nuance Pharma Ltd.;

**SCHEDULE “B”  
NOTICE TO CLAIMANTS**

Court File No.: CV-24-00719237-00CL

BETWEEN:

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**RE: NOTICE OF CLAIMS PROCESS**

**PLEASE TAKE NOTICE** that this notice is being published pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) made June [24], 2024 (the “**Claims Process Order**”). If you believe you are a creditor of Antibe, please continue reading this notice.

A Claims Process has been commenced pursuant to the Claims Process Order. All creditors of Antibe are required to submit a Proof of Claim to FTI Consulting Canada Inc., the Court-appointed receiver and manager of Antibe (in such capacity, the “**Receiver**”) on or before **August 30, 2024**.

Creditors may obtain the Claims Process Order and a Claims Package from the Receiver’s website at <http://cfcanada.fticonsulting.com/antibe/> or by contacting the Receiver by email at [antibe@fticonsulting.com](mailto:antibe@fticonsulting.com).

If you are a creditor of Antibe and wish to assert a claim, you are required to submit a completed Proof of Claim to the Receiver by **1:00 p.m. (Toronto Time) on August 30, 2024** (the “**Claims Bar Date**”). It is your responsibility to complete the appropriate documents and ensure that the Receiver receives your completed documents by the Claims Bar Date.

**CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE FOREVER BARRED AND EXTINGUISHED.**

DATED at Toronto this \_\_\_\_ day of \_\_\_\_\_, 2024.

**SCHEDULE "C"  
PROOF OF CLAIM**

Court File No.: CV-24-00719237-00CL

BETWEEN:

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

---

**PROOF OF CLAIM**

---

**1. PARTICULARS OF CLAIMANT**

- (a) Full Legal Name of Claimant: \_\_\_\_\_
- (b) Full Mailing Address of Claimant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (c) Telephone Number of Claimant: \_\_\_\_\_
- (d) Facsimile Number of Claimant: \_\_\_\_\_
- (e) E-mail Address of Claimant: \_\_\_\_\_
- (f) Attention (Contact Person): \_\_\_\_\_



**2. PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED THE CLAIM, IF APPLICABLE:**

Have you acquired this Claim by assignment?      Yes            No     

(if yes, attach documents evidencing assignment)

Full Legal Name of original creditor(s): \_\_\_\_\_

**3. PROOF OF CLAIM**

**THE UNDERSIGNED CERTIFIES AS FOLLOWS:**

That I [am a Claimant/hold the position of \_\_\_\_\_ of the Claimant][*select applicable*] and have knowledge of all the circumstances connected with the Claim described herein;

That I have knowledge of all of the circumstances connected with the Claim described herein and set out below;

\_\_\_\_\_ [Insert Respondent Name] was and is still indebted to the Claimant as follows:

*(Any Claims denominated in a foreign currency shall be filed in such currency and will be converted to Canadian Dollars at rates set out in the Claims Process Order.)*

	<b>Amount of Claim</b>
1.	\$
2.	\$
3.	\$
4.	\$
<b>TOTAL</b>	<b>\$</b>

#### 4. NATURE OF CLAIM

**(CHECK AND COMPLETE APPROPRIATE CATEGORY)**

- Total Unsecured Claim of \$ \_\_\_\_\_
- Total Secured Claim of \$ \_\_\_\_\_
- Total Proprietary Claim of \$ \_\_\_\_\_
- Total D&O Claim of \$ \_\_\_\_\_

In respect of this debt, I hold security over the assets of \_\_\_\_\_ [Insert Respondent Name] valued at \$ \_\_\_\_\_ [List the amount of security], the particulars of which security and value are attached to this Proof of Claim form.

*(If the Claim is secured, provide full particulars of the security, including the date on which the security was given the value for which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security.)*

#### 5. PARTICULARS OF CLAIM:

The particulars of the undersigned's total Claim are attached.

*(Provide full particulars of the Claim(s) and supporting documentation, including the amount, description of transaction(s) or agreement(s) giving rise to the Claim(s), name of any guarantor(s) which has guaranteed the Claim(s), and amount of Claim(s) allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed.*

#### 6. FILING OF CLAIM

**This Proof of Claim must be returned to and received by the Receiver by 1:00 p.m. (Toronto Time) on the Claims Bar Date (August 30, 2024).**

In each case, completed forms must be delivered by prepaid registered mail, courier,

personal delivery, facsimile transmission or email to the Receiver at the following address:

**FTI Consulting Canada Inc.**

79 Wellington Street West

Suite 2010, P.O. Box 104

Toronto, Ontario M5K 1G8

Attn: Jim Robinson and Jonathan Joffe

Email: [antibe@fticonsulting.com](mailto:antibe@fticonsulting.com)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**SCHEDULE "D"**  
**NOTICE OF REVISION OR DISALLOWANCE OF CLAIM**

Court File No.: CV-24-00719237-00CL

BETWEEN:

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

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**NOTICE OF REVISION OR DISALLOWANCE**

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TO:

The Receiver has reviewed your Proof of Claim dated \_\_\_\_\_, 2024, and has revised or rejected your Claim in respect of \_\_\_\_\_ for the following reasons:

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Subject to further dispute by you in accordance with the provisions of the Claims Process Order, your Claim will be allowed as follows:

<b>Original Claim Amount</b>	<b>Disallowed Amount</b>	<b>Revised Allowed Amount</b>
\$	\$	\$
\$	\$	\$
\$	\$	\$

If you intend to dispute this Notice of Revision or Disallowance, you must notify the Receiver of such intent by delivery to the Receiver of a Dispute Notice in accordance with the Claims Process Order, such that it is received by the Receiver by 1:00 p.m. no later than fourteen (14) calendar days after you receive such Notice of Revision or Disallowance at the following address by prepaid registered mail, courier, personal delivery, facsimile transmission or email:

**FTI Consulting Canada Inc.**

TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attn: Jim Robinson and Jonathan Joffe  
Email: [antibe@fticonsulting.com](mailto:antibe@fticonsulting.com)

If you do not deliver a Dispute Notice in accordance with the Claims Process Order, the value of your Claim(s) shall be deemed to be as set out in this Notice of Revision or Disallowance.

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**SCHEDULE "E"  
DISPUTE NOTICE**

Court File No.: CV-24-00719237-00CL

BETWEEN:

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

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**DISPUTE NOTICE**

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**1. PARTICULARS OF CLAIMANT**

(g) Full Legal Name of Claimant: \_\_\_\_\_

(h) Full Mailing Address of Claimant: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(i) Telephone Number of Claimant: \_\_\_\_\_

(j) Facsimile Number of Claimant: \_\_\_\_\_

(k) E-mail Address of Claimant: \_\_\_\_\_

(l) Attention (Contact Person): \_\_\_\_\_

**2. PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED  
THE CLAIM, IF APPLICABLE:**

- (m) Have you acquired this Claim by assignment? Yes  No   
 (if yes, attach documents evidencing assignment)

Full Legal Name of original creditor(s): \_\_\_\_\_

**3. DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM:**

*(Any Claims denominated in a foreign currency shall be filed in such currency and will be converted to Canadian dollars at the rate set out in the Claims Procedure Order.)*

We hereby disagree with the value of our Claim as set out in the Notice of Revision or Disallowance dated \_\_\_\_\_, as set out below:

<b>Claim as Allowed or Revised per Notice of Revision or Disallowance</b>	<b>Claim per Claimant</b>
\$	\$
\$	\$
<b>Total</b>	\$

*(Insert particulars of Claim per Notice of Revision or Disallowance, and the value of your Claim as asserted by the Claimant.)*

**4. REASONS FOR DISPUTE:**

*(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. The particulars provided must support the value of the Claim, as stated by you in item 2 above.*

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If you intend to dispute the Notice of Revision or Disallowance, you must notify the Receiver of such intent by delivery to the Receiver of this Dispute Notice in accordance with the Claims Process Order such that it is received by the Receiver by 1:00 p.m. no later than fourteen (14) calendar days after you receive such Notice of Revision or Disallowance at the following address by prepaid registered mail, courier, personal delivery, facsimile transmission or email:

**FTI Consulting Canada Inc.**  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attn: Jim Robinson and Jonathan Joffe  
Email: [antibe@fticonsulting.com](mailto:antibe@fticonsulting.com)

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024



**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT**

**NUANCE PHARMA LTD.**

Applicant

AND

**ANTIBE THERAPEUTICS INC.**  
Respondent

Court File No.: CV-24-00719237-00CL

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

Proceedings commenced at Toronto

**CLAIMS PROCEDURE ORDER**

**Thornton Grout Finnigan LLP**  
Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON M5K 1K7

**Rebecca L. Kennedy (LSO# 61146S)**  
Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

**Ines Ferreira (LSO # 81472A)**  
Email: [iferreira@igf.ca](mailto:iferreira@igf.ca)  
Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Receiver,  
FTI Consulting Canada Inc.

# TAB 5

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

THE HONOURABLE ) MONDAY, THE 24<sup>th</sup>  
 )  
JUSTICE OSBORNE ) DAY OF JUNE, 2024  
 )

**B E T W E E N:**

**NUANCE PHARMA LTD.**

Applicant

- and -

**ANTIBE THERAPEUTICS INC.**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE  
COURTS OF JUSTICE ACT**

**ORDER**

**(Approval of the Receiver’s First Report and Activities, and other Ancillary Relief)**

**THIS MOTION**, made by FTI Consulting Canada Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") without security, of all of the present and future assets, undertakings and real and personal property of Antibe Therapeutics Inc. ("**Antibe**"), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the Receiver dated June 18, 2024, the First Report of the Receiver dated June 18, 2024 (including the appendices thereto, the "**First Report**"), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the Service List, as appears from the affidavit of service, sworn and filed,

## **APPROVAL OF THE ACTIVITIES OF THE RECEIVER**

1. **THIS COURT ORDERS** that the First Report and the activities, conduct and decisions of the Receiver set out therein are hereby ratified and approved, provided that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

## **ACCOUNTS**

2. **THIS COURT ORDERS** that the accounts of the Receiver and its legal counsel, Thornton Grout Finnigan LLP, as filed with the First Report, are hereby approved and passed in these proceedings.

## **RECOGNIZING ARBITRAL AWARD**

3. **THIS COURT ORDERS** that the Arbitral Award attached hereto as Schedule “A” shall be and hereby is recognized pursuant to the *International Commercial Arbitration Act, R.S.O. 1990, c. I.19*, and enforceable in the same manner as a judgment or order of the Ontario Superior Court of Justice.
  4. **THIS COURT ORDERS** that the Arbitral Award be converted to Canadian currency sufficient to purchase US \$20,000,000 plus US \$4,000,000 representing interest and costs at a bank in Ontario listed in Schedule I to the *Bank Act (Canada)* at the close of business on the first day on which the bank quotes a Canadian dollar rate for purchase of the foreign currency before the day payment of the obligation is received by Nuance pursuant to Section 121 of the *Courts of Justice Act, R.S.O. 1990*, for the principal, interest and costs owing under the Arbitral Award.
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**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT**

**NUANCE PHARMA LTD.**

AND

**ANTIBE THERAPEUTICS INC.**

Applicant

Respondent

Court File No.: CV-24-00719237-00CL

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

Proceedings commenced at Toronto

**ORDER**

**(Approval of the Receiver's First Report and Activities,  
and other Ancillary Relief)**

**Thornton Grout Finnigan LLP**

Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON M5K 1K7

**Rebecca L. Kennedy (LSO# 61146S)**

Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

**Ines Ferreira (LSO # 81472A)**

Email: [iferreira@tgf.ca](mailto:iferreira@tgf.ca)

Tel: 416-304-1616

Fax: 416-304-1313

Lawyers for the Receiver

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT**

**NUANCE PHARMA LTD.**

- and -

**ANTIBE THERAPEUTICS INC.**

Applicant

Respondent

Court File No. CV-24-00719237-00CL

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

Proceedings commenced at Toronto, Ontario

**MOTION RECORD  
Returnable June 24, 2024**

**Thornton Grout Finnigan LLP**

TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200  
Toronto, ON M5K 1K7

**Rebecca L. Kennedy (LSO# 61146S)**

Tel: (416) 304-0603  
Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

**Ines Ferreira (LSO# 81472A)**

Tel: (416) 304-0461  
Email: [iferreira@tgf.ca](mailto:iferreira@tgf.ca)

Lawyers for the Court-appointed Receiver,  
FTI Consulting Canada Inc.