

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ANTIBE THERAPEUTICS INC.

**PRE-FILING REPORT TO THE COURT  
SUBMITTED BY DELOITTE RESTRUCTURING INC.,  
IN ITS CAPACITY AS PROPOSED MONITOR**

**SECTION A - INTRODUCTION**

1. Deloitte Restructuring Inc. ("**Deloitte**" or the "**Proposed Monitor**") has been informed that Antibe Therapeutics Inc. (the "**Applicant**") intends to make an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an initial order (the "**Proposed Initial Order**") granting, *inter alia*, a stay of proceedings in favour of the Applicant until April 18, 2024, (the "**Stay Period**") and appointing Deloitte as monitor (in such capacity, the "**Monitor**"). The proceedings to be commenced by the Applicant under the CCAA will be referred to herein as the "**CCAA Proceedings**".

2. On March 28, 2024, the Applicant was served with a Notice of Application by Nuance Pharma Limited (“**Nuance**”) seeking, *inter alia*, recognition of an unsecured arbitration award totalling approximately US\$24 million made against the Applicant in favour of Nuance and the appointment of a receiver (the “**Nuance Application**”).
3. This pre-filing report of the Proposed Monitor (the “**Report**”) has been prepared to provide information to the Court for its consideration in respect of the relief sought by the Applicant in the Proposed Initial Order. The Proposed Monitor understands that, if the Proposed Initial Order is granted, the Applicant will be seeking an amended and restated initial order (the “**Proposed ARIO**”) at a subsequent hearing, to be scheduled with the supervising judge prior to the expiry of the Stay Period, providing for an extension of the Stay Period and increases in the Court-ordered charges. If appointed, the Monitor intends to file a further report in advance of that hearing to provide information on the relief sought in the Proposed ARIO.
4. The purpose of this Report is to inform the Court on the following:
  - (a) The qualifications of Deloitte to act as Monitor and an overview of the involvement of Deloitte with the Applicant to date;
  - (b) The state of the business and affairs of the Applicant and the causes of its financial difficulty and insolvency;
  - (c) The proposed conduct of the CCAA Proceedings;
  - (d) The Applicant’s weekly cash flow forecast for the period April 6, 2024, to May 17, 2024 (the “**April 8 Forecast**”);
  - (e) The Applicant’s request for a stay of proceedings and the Proposed Monitor’s recommendation thereon;

- (f) The Applicant’s request for approval of the engagement letter dated March 17, 2024, with effect as of March 6, 2024, between the Applicant and Black Swan Advisors Inc. (“**Black Swan**”) pursuant to which Black Swan is providing the services of Mr. Edward Sellers to act as Restructuring Advisor (the “**RA**”) to the Applicant (the “**RA Engagement Letter**”), and the Proposed Monitor’s recommendation thereon;
- (g) The Applicant’s request for approval of a charge in the amount of \$150,000 (the “**Directors’ Charge**”) securing the indemnification by the Applicant of its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the CCAA Proceedings, except to the extent that, with respect to any individual, the obligation or liability was incurred as a result of the individual’s gross negligence or wilful misconduct, and the Proposed Monitor’s recommendation thereon; and
- (h) The Applicant’s request for approval of a charge in the amount of \$250,000 (the “**Administration Charge**”) securing the fees and expenses of the Monitor, legal counsel to the Monitor (the “**Monitor’s Counsel**”), legal counsel of the Applicant (the “**Applicant’s Counsel**”) and the RA, and the Proposed Monitor’s recommendation thereon.

**SECTION B - TERMS OF REFERENCE**

- 5. In preparing this Report, the Proposed Monitor has relied upon unaudited financial information of the Applicant, the Applicant’s books and records, certain financial information prepared by the Applicant and discussions with various parties (the “**Information**”).

6. Except as otherwise described in this Report:
  - (a) The Proposed Monitor 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 Proposed Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
7. The Proposed Monitor has prepared this Report in connection with the application for the Proposed Initial Order filed by the Applicant (the “**Initial Application**”) and should not be relied on for any other purpose.
8. Future oriented financial information reported or relied on in preparing this Report is based on the assumptions of the management of the Applicant (“**Management**”) regarding future events; actual results may vary from forecast and such variations may be material.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in **Canadian dollars**. Capitalized terms not otherwise defined herein have the meanings given to them in the affidavit of Mr. Scott Curtis, Chief Operating Officer of the Applicant, sworn April 8, 2024, in support of the Initial Application (the “**Curtis Initial Affidavit**”).

## **SECTION C - EXECUTIVE SUMMARY**

10. The Proposed Monitor is of the view that:

- (a) Granting the relief requested in the Proposed Initial Order, including the stay of proceedings, will provide the Applicant with the best opportunity to preserve and maximize value for its stakeholders generally;
- (b) The fees payable under the RA Engagement Letter are within market parameters, the engagement of the RA will be of assistance to the efficient and effective carriage of the CCAA Proceedings and will therefore be of benefit both to the Applicant and to its stakeholders, and the RA is well qualified to provide the services under the RA Engagement Letter;
- (c) The quantum of the proposed Directors' Charge is reasonable in relation to the quantum of the estimated potential liability;
- (d) The quantum of the proposed Administration Charge is reasonable in the circumstances; and
- (e) The relief requested by the Applicant, including the stay of proceedings and the granting of the Directors' Charge and the Administration Charge, is necessary, reasonable and justified.

11. Accordingly, the Proposed Monitor respectfully recommends that the Applicant's request for the Proposed Initial Order be granted by the Court.

## **SECTION D - DELOITTE**

### **QUALIFICATIONS TO ACT**

12. Deloitte is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA. Deloitte has provided its consent to act as Monitor.

13. As set out in greater detail below, Deloitte has been acting as financial advisor to the Applicant and is familiar with its business and operations, certain of its personnel, the key issues and the key stakeholders in these CCAA Proceedings. The senior Deloitte representative with carriage of this matter is an experienced Chartered Insolvency and Restructuring Professional and a Licensed Insolvency Trustee, who has acted in restructurings and CCAA matters in Ontario and other provinces of Canada and as an authorized “foreign representative” in foreign jurisdictions. Between them, Deloitte and its affiliates also have extensive experience in the pharmaceutical industry.

## **DELOITTE’S INVOLVEMENT TO DATE**

14. Deloitte was originally engaged as financial advisor to the Applicant pursuant to an engagement letter between Deloitte and the Applicant executed March 12, 2024 (the “**Deloitte Engagement Letter**”) and has been active in providing assistance and advice to the Applicant from that time. Deloitte’s role as financial advisor was to provide financial, strategic and restructuring advice and, if necessary, to assist the Applicant in preparing for a filing under the CCAA.
15. Deloitte has provided no accounting or auditing services to the Applicant. Fees payable to Deloitte pursuant to the Deloitte Engagement Letter are based on hours worked multiplied by normal hourly rates. Deloitte is not entitled to any success-based or other contingency-based fee.

**SECTION E - APPLICANT’S BUSINESS & AFFAIRS AND CAUSES OF INSOLVENCY**

16. The business and affairs of the Applicant and the causes of its insolvency are described in the Curtis Initial Affidavit. The Proposed Monitor has reviewed the Curtis Initial Affidavit and discussed the business and affairs of the Applicant and the causes of its insolvency with Management and is of the view that the Curtis Initial Affidavit provides a fair summary thereof.

**SECTION F - THE PROPOSED CONDUCT OF THE CCAA PROCEEDINGS**

17. As described in the Curtis Initial Affidavit, the Applicant is developing a new non-steroidal anti-inflammatory drug (“**NSAID**”), named otenaproxesul. NSAIDs, as the main alternative to opioids, are employed widely for pain management but have generally carried a risk of serious gastrointestinal problems. The Proposed Monitor has been informed that in earlier studies and simulations undertaken by the Applicant, otenaproxesul has shown robust efficacy against placebo and a material reduction in the risk of gastrointestinal ulcers as compared to naproxen, one of the current leading NSAIDs.
18. A Phase 2 trial is a major milestone in the development of any drug and the Applicant had commenced preparations for a Phase 2 clinical trial for otenaproxesul. Patient screening was scheduled to commence on or around March 28, 2024; in-patient testing was scheduled to commence on or about April 15, 2024, and run until approximately mid-July; and follow-up blood testing to be completed 30 days after the end of in-patient testing (the “**Phase 2 Trial**”) with “topline results” expected to be available within two to three days of the completion of the trial.

19. As described in the Curtis Initial Affidavit, in preparation for the Phase 2 Trial, the Applicant had been in correspondence with the U.S. Food and Drug Administration (the “**FDA**”), the agency with responsibility for overseeing such drug development trials, to provide the necessary information for the FDA to determine whether to allow the Phase 2 Trial to proceed. On the afternoon of March 28, 2024, the FDA verbally informed the Applicant that it would be putting the Phase 2 Trial on hold. The FDA informed the Applicant that it would provide its written notice, and formally articulate its reasons within 30 days (the “**FDA Notice**”).
20. If the Initial Order is granted, the Applicant intends to continue its engagement with the FDA in order to clarify the reasons that resulted in the hold, to endeavour to satisfactorily address them in order to enable the Phase 2 Trial to proceed or determine what other steps might be necessary and appropriate.

**SECTION G - THE APRIL 8 FORECAST**

21. The April 8 Forecast, together with Management’s report on the cash-flow statement as required by section 10(2)(b) of the CCAA, is attached hereto as **Appendix A**. The April 8 Forecast shows a net cash outflow of approximately \$1.5 million for the period April 6, 2024, to May 17, 2024, and is summarized below:



	<b>\$000</b>
<b>Receipts</b>	<b>0.0</b>
<b>Disbursements:</b>	
Employee and contractor costs	(451.7)
Selling, general and administrative costs	(164.3)
Other costs and contingency	(91.2)
Professional fees (incl. HST)	(797.8)
<b>Net Cash Inflow/(Outflow)</b>	<b>(1,505.0)</b>
<b>Beginning Cash Balance</b>	19,634.8
Net Cash Inflow/(Outflow)	(1,505.0)
<b>Ending Cash Balance</b>	<b>18,129.8</b>

22. Section 23(1)(b) of the CCAA states that the Monitor shall:

“review the company’s cash-flow statement as to its reasonableness and file a report with the court on the monitor’s findings;”

23. Pursuant to section 23(1)(b) of the CCAA and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:

(a) The April 8 Forecast has been prepared by Management of the Applicant for the purpose described in Note 1, using the probable assumptions and the hypothetical assumptions set out in Notes 2 to 5, thereof;

- (b) The Proposed Monitor’s review of the April 8 Forecast consisted of inquiries, analytical procedures and discussion related to information supplied by certain of Management and employees of the Applicant. Since hypothetical assumptions need not be supported, the Proposed Monitor’s procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the April 8 Forecast. The Proposed Monitor has also reviewed the support provided by Management for the probable assumptions, and the preparation and presentation of the April 8 Forecast;
- (c) Based on its review, nothing has come to the attention of the Proposed Monitor that causes it to believe that, in all material respects:
  - (i) The hypothetical assumptions are not consistent with the purpose of the April 8 Forecast;
  - (ii) As at the date of this Report, the probable assumptions developed by Management are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the April 8 Forecast, given the hypothetical assumptions; or
  - (iii) The April 8 Forecast does not reflect the probable and hypothetical assumptions;

- (d) Since the April 8 Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the April 8 Forecast will be achieved. The Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Proposed Monitor in preparing this Report; and
- (e) The April 8 Forecast has been prepared solely for the purpose described in Note 1 on the face of the April 8 Forecast and readers are cautioned that it may not be appropriate for other purposes.

## **SECTION H - THE STAY OF PROCEEDINGS**

- 24. The Applicant is seeking a stay of proceedings in the standard form of the Ontario model initial order.
- 25. As described in the Curtis Initial Affidavit, the need for the CCAA Proceedings is driven by the inability to pay the arbitration award owing to Nuance, the inability to reach an agreement with Nuance to consensually address the arbitration award and the service of the Nuance Application.
- 26. The stay of proceedings would provide the Applicant the opportunity to continue its engagement with the FDA in order to clarify the reasons that resulted in the hold, to endeavour to satisfactorily address them in order to enable the Phase 2 Trial to proceed or to allow the Applicant to determine what other steps might be necessary and appropriate, all in order to endeavour to maximize value for all stakeholders.

27. The Applicant has insufficient funds to pay the unsecured arbitration award at the current time. A liquidation of the business would likely generate significant additional claims in addition to the amount owing to Nuance, including claims relating to the existing license agreements, claims relating to other contractual arrangements and severance and termination claims of employees. In addition, a liquidation would jeopardize or materially delay the potential societal benefits that could result from the successful development of otenaproxesul.
28. In the Proposed Monitor's view, the granting of the stay of proceedings will provide the Applicant with the best opportunity to preserve and maximize value for its stakeholders generally.
29. Furthermore, the Proposed Monitor is of the view that the balance of potential prejudice of granting the stay versus the appointment of a receiver or the liquidation of the business weighs in favour of the granting of the Proposed Initial Order.
30. Accordingly, the Proposed Monitor is of the view that the stay of proceedings is necessary and justified in the circumstances.

## **SECTION I - THE RA ENGAGEMENT LETTER**

31. The RA Engagement Letter was executed on March 17, 2024, with effect as of March 6, 2024. A copy of the RA Engagement Letter<sup>1</sup> is attached hereto as **Appendix B**.

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<sup>1</sup> Bank account details for payments have been redacted.

32. Pursuant to the RA Engagement Letter, Black Swan was retained to provide the services of Mr. Edward Sellers, Black Swan's President & Managing Director, as Restructuring Advisor to the Applicant to provide the services set out in Schedule A to the RA Engagement Letter.
33. The fees payable under the RA Engagement Letter are \$1,500 per hour<sup>2</sup>. In addition, the RA Engagement Letter provides for the reimbursement of commercially reasonable out-of-pocket expenses incurred. There are no success, completion or other contingent fees payable under the RA Engagement Letter.
34. Mr. Sellers has over 35 years of restructuring, interim management and advisory experience, having served in various engagements as Board Chair, Director, interim C-suite executive and lawyer for many public and private corporations in Canada, the United States and overseas. He was formerly the Chair of the restructuring practice at Osler, Hoskin & Harcourt LLP and is a Fellow of the Insolvency Institute of Canada. The Proposed Monitor has worked with Mr. Sellers in a number of previous cases and is satisfied that Mr. Sellers is well qualified for the role of RA.
35. Although bearing a different title and without the executive officer title, the role of RA as outlined in the RA Engagement Letter is broadly consistent with the role of a Chief Restructuring Officer ("**CRO**"), the appointment of which is often approved by the Court in CCAA cases. The Proposed Monitor has reviewed the publicly available terms of several CRO appointments that have been approved by the Court and courts in other jurisdictions across Canada and is satisfied that the fees payable under the RA Engagement Letter are within market parameters.

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<sup>2</sup> The RA Engagement Letter provides for a minimum fee of \$200,000 for the engagement, which threshold was reached prior to the filing of the CCAA application.

36. The existing management team of the Applicant does not have restructuring experience or expertise. The Proposed Monitor is of the view that the engagement of the RA will be of assistance to the efficient and effective administration of the CCAA Proceedings, will not duplicate the roles or activities of existing management, and will therefore be of benefit both to the Applicant and to its stakeholders.
37. Accordingly, the Proposed Monitor respectfully recommends that the Applicant's request for the approval of the RA Engagement Letter be granted by the Court.

#### **SECTION J - THE PROPOSED DIRECTORS' CHARGE**

38. The Applicant is seeking the granting of the Directors' Charge ranking subordinate to the Administration Charge and in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except for any Person with a properly perfected Encumbrance on the Property who did not receive notice of the application.
39. The beneficiaries of the Directors' Charge, if granted, would be the directors and officers the Applicant. It is the Proposed Monitor's view that the continued support and service of the directors and officers during the CCAA Proceedings would be beneficial to the Applicant's efforts to preserve and maximize value for stakeholders. The Proposed Monitor has been informed that the directors and officers will not continue to serve unless the Directors' Charge is granted.
40. The quantum of the proposed Directors' Charge is based on estimated amounts for which directors could potentially have statutory personal liability that could accrue during the CCAA Proceedings:

- (a) Wages and salaries;
- (b) Accrued vacation pay; and
- (c) Directors' fees.

41. The estimated amounts that could be outstanding during the CCAA Proceedings, assuming payments are made in accordance with the April 8 Forecast is summarized as follows:

	<b>Proposed Initial Order</b>	<b>Proposed ARIO</b>
Wages and Salaries	81,407	122,110
Vacation Pay	56,358	225,434
Directors' Fees	12,264	36,792
<b>Total</b>	<b>150,029</b>	<b>384,336</b>
<b>Proposed Charge</b>	<b>150,000</b>	<b>385,000</b>

42. The amounts above are estimated based on the following assumptions:
- (a) Wages and salaries – Payroll is paid semi-monthly to the date of payment. The amount for the Proposed Initial Order assumes 10 days of payroll. The amount for the Proposed ARIO assumes one full payment cycle;
  - (b) Vacation pay – The Proposed Monitor has been informed that employees are entitled to four weeks of vacation. The Proposed Initial Order assumes one week of vacation pay. The Proposed ARIO assumes four weeks of vacation; and
  - (c) Directors' fees – The April 8 Forecast assumes that Directors' fees are paid monthly. The Proposed Initial Order assumes 10 days of Directors' fees. The Proposed ARIO assumes one month of Directors' fees.

43. The Proposed Monitor notes that the directors and officers will only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any existing insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the directors and officers are entitled to be indemnified pursuant to the provisions of the Proposed Initial Order. The existing insurance policies expire on or about June 30, 2024, and there is no certainty that the Applicant will be able to renew the policies or find alternate insurance.
44. Accordingly, the Proposed Monitor respectfully recommends that the Applicant's request for the Directors' Charge be granted by the Court.

#### **SECTION K - THE ADMINISTRATION CHARGE**

45. The Applicant is seeking the granting of the Administration Charge in priority to all other Encumbrances in favour of any Person, except for any Person with a properly perfected Encumbrance on the Property who did not receive notice of the application.
46. The beneficiaries of the Administration Charge, if granted, would be the Monitor, the Monitor's Counsel, the Applicant's Counsel and the RA. The Proposed Monitor believes that it is appropriate that the proposed beneficiaries of the Administration Charge be afforded the benefit of a charge as they will be undertaking a necessary and integral role in the CCAA Proceedings.



47. The proposed amounts of the Administration Charge are \$250,000 in the Proposed Initial Order, increasing to \$500,000 in the Proposed ARIO. The Proposed Monitor has reviewed and considered the underlying assumptions upon which the Applicant has based the quantum of the proposed Administration Charge, the complexities of the CCAA Proceedings and the services to be provided by the beneficiaries of the Administration Charge and is of the view that the proposed quantum of the Administration Charge is reasonable and appropriate in the circumstances.
48. Accordingly, the Proposed Monitor respectfully recommends that the Applicant's request for the Administration Charge be granted by the Court.

The Proposed Monitor respectfully submits to the Court this, its Pre-Filing Report.

Dated this 8<sup>th</sup> day of April, 2024.

Deloitte Restructuring Inc.  
In its capacity as Proposed Monitor of  
Antibe Therapeutics Inc.  
and not in its personal or corporate capacity



Per: Nigel D. Meakin  
Senior Vice President

**APPENDIX A**

**The April 8 Forecast**

<b>Antibe Therapeutics Inc.</b>							
<b>Cash Flow Forecast</b>							
<b>(in \$000)</b>							
<b>Week Ending</b>	<b>12-Apr-24</b>	<b>19-Apr-24</b>	<b>26-Apr-24</b>	<b>3-May-24</b>	<b>10-May-24</b>	<b>17-May-24</b>	<b>Total</b>
<b>Receipts</b>							
Interest Income	-	-	-	-	-	-	-
HST Receipts	-	-	-	-	-	-	-
<b>Total Receipts</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Operating Disbursements</b>							
Employee & Contractor Costs	-	(113.0)	(87.8)	(94.9)	(51.1)	(104.9)	<b>(451.7)</b>
Selling, General and Administrative Costs	(26.6)	(62.0)	(36.0)	(5.2)	(5.2)	(29.3)	<b>(164.3)</b>
Other Costs	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	<b>(1.2)</b>
Contingency Costs	(15.0)	(15.0)	(15.0)	(15.0)	(15.0)	(15.0)	<b>(90.0)</b>
<b>Total Operating Disbursements</b>	<b>(41.8)</b>	<b>(190.2)</b>	<b>(139.0)</b>	<b>(115.3)</b>	<b>(71.5)</b>	<b>(149.4)</b>	<b>(707.2)</b>
<b>Operating Cash Flow</b>	<b>(41.8)</b>	<b>(190.2)</b>	<b>(139.0)</b>	<b>(115.3)</b>	<b>(71.5)</b>	<b>(149.4)</b>	<b>(707.2)</b>
<b>Restructuring Costs</b>							
Professional Fees (incl. HST)	(181.9)	(200.6)	(186.5)	(76.3)	(48.0)	(104.5)	<b>(797.8)</b>
<b>Total Restructuring Costs</b>	<b>(181.9)</b>	<b>(200.6)</b>	<b>(186.5)</b>	<b>(76.3)</b>	<b>(48.0)</b>	<b>(104.5)</b>	<b>(797.8)</b>
<b>Net Cash Flow</b>	<b>(223.7)</b>	<b>(390.8)</b>	<b>(325.5)</b>	<b>(191.6)</b>	<b>(119.5)</b>	<b>(253.9)</b>	<b>(1,505.0)</b>
<b>Total Liquidity</b>							
Opening	19,634.8	19,411.1	19,020.3	18,694.8	18,503.2	18,383.7	<b>19,634.8</b>
Net Cash Flow	(223.7)	(390.8)	(325.5)	(191.6)	(119.5)	(253.9)	<b>(1,505.0)</b>
Closing	<b>19,411.1</b>	<b>19,020.3</b>	<b>18,694.8</b>	<b>18,503.2</b>	<b>18,383.7</b>	<b>18,129.8</b>	<b>18,129.8</b>

#### Notes

- [1] The purpose of the CFF is to estimate the liquidity requirements of Antibe Therapeutics Inc. ("Antibe") during the forecast period. The forecast above is presented in Canadian Dollars.
- [2] Any estimates in US Dollars have been translated at an foreign exchange rate of 1.35.
- [3] Forecast Employee & Contractor Costs are based on historic payroll and contractor amounts.
- [4] Forecast Selling, General, and Administrative Costs include costs related to marketing, accounting, legal, investor relations, office, and public company costs. The forecast contemplates increase in regulatory costs due to liaising with the U.S. Food and Drug Administration ("FDA") regarding the clinical hold of the planned Phase II trial.
- [5] Forecast Professional Fees include the Company's legal and financial advisors.

**APPENDIX B**

**The RA Engagement Letter**



March 17, 2024

Antibe Therapeutics Inc.  
15 Prince Arthur Ave.  
Toronto ON  
M5R 1B2

Attention: Mr. Dan Legault  
Chief Executive Officer

Dear Sirs/Mesdames:

Re: Engagement of Black Swan Advisors Inc., for Edward A. Sellers to Serve as Restructuring Advisor to Antibe Therapeutics Inc.

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Antibe Therapeutics Inc. ("Company") wishes to retain Black Swan Advisors Inc. ("Black Swan") to provide the services of Edward A. Sellers ("Sellers"), Black Swan's President & Managing Director, as Restructuring Advisor to the Company.

This letter will confirm the appointment of Sellers as Restructuring Advisor to the Company and set out the terms of the appointment.

### **1. Services**

Black Swan's services will be provided by Sellers and will encompass the scope of appointment set out in Schedule A ("Advisory Services").

The Board of Directors ("Board") and the Chief Executive Officer ("CEO") of the Company shall cause employees and representatives of the Company and its agents and advisors to co-operate with and assist Sellers in acting as Restructuring Advisor and in performing the Advisory Services.

Black Swan shall cause Sellers to conduct himself as Restructuring Advisor in the manner reasonably expected of a senior advisor to the Company and to comply in all material respects with policies and codes of conduct of the Company applicable to the Restructuring Advisor including, without limitation, policies relating to trading in securities and confidentiality of information, copies of which or access to will be provided to Black Swan and Sellers.

### **2. Reporting and Legal Relationship**

Black Swan and Sellers have been retained and will provide the Advisory Services to the Company, including the Board and the CEO, as independent contractors and will have no legal authority to bind the Company to any obligation.

In acting as Restructuring Advisor, Sellers will report exclusively to and receive instructions from the Board and the CEO. The Board and the CEO will designate members

of the Company's senior management team from time-to-time that Black Swan and Sellers may liaise with in providing the Advisory Services.

### **3. Term of Appointment**

Subject to the provisions below regarding a) ongoing payment, performance and indemnification obligations continuing after the termination of this engagement ("Termination Obligations") and b) the terms of any applicable court order in any Restructuring Proceedings (as defined below), the appointment of Sellers as Restructuring Advisor may be terminated by either the Company or Black Swan on notice with immediate effect.

Black Swan and Sellers acknowledge that their retention is not an acknowledgment or indication that the Company has determined to commence proceedings in connection with any postponement, moratorium, compromise or reduction of payment or performance of any obligation, or to arrange, re-organize or restructure any of its capital, obligations, operations, or business affairs ("Restructuring Proceedings").

If circumstances change and the Company determines that commencing Restructuring Proceedings is advisable or required, the Company intends that Black Swan continue to assist in any such Restructuring Proceedings and acknowledges that Sellers may be appointed as Chief Restructuring Officer ("CRO") by court order, or in some similar role, in such Restructuring Proceedings. In such event, Sellers' engagement as Restructuring Advisor hereunder could be confirmed, augmented, amended, or superseded, by the terms of any court order issued in the Restructuring Proceedings.

### **4. Acknowledgement**

Black Swan shall cause Sellers to devote such time and attention as circumstances require to serve as Restructuring Advisor. In that regard, Black Swan has agreed to cause Sellers to be present physically in Toronto as necessary, and as permitted in compliance with orders of public health authorities and prudential personal safety standards, to better serve as Restructuring Advisor.

The Company acknowledges that Black Swan and Sellers have and will have other commitments and business activities which they will continue to be involved in, provided that such activities do not interfere with the effective performance of the Advisory Services hereunder.

### **5. Information**

The Company will use commercially reasonable efforts to ensure that all information to be provided directly by it or indirectly on their instruction, orally or in writing, to Black Swan or Sellers in connection with Sellers' engagement hereunder and Sellers' service as Restructuring Advisor ("Information") will be accurate and complete in all material respects.

Although the Company will make commercially reasonable efforts to ensure the accuracy, completeness and reliability of the Information provided to Black Swan and Sellers in



connection with providing the Advisory Services, the Company makes no representations or warranties, express or implied, as to the quality, accuracy, reliability or completeness of the Information, and Black Swan and Sellers expressly acknowledge the inherent risk of error in the use of the Information.

The Company acknowledges that there will typically be a direct correlation between the content, aptness and quality of the Advisory Services, and the quality, accuracy, reliability, and completeness of the Information provided to Black Swan and Sellers.

## **6. Fees, Expenses and Taxes**

Black Swan shall be paid by the Company the following compensation for providing Sellers' services referred to above. Until notified to the contrary, all payments to be made and transferred to the Canadian dollar account specified in Schedule B hereto, which Schedule B forms part of this agreement.

**Hourly Fee and Retainer:** Black Swan will be paid for Sellers providing the Advisory Services based on an hour x rate formula using an hourly rate of C\$1,500 ("Hourly Fee"). Time will be booked in increments of no less than a quarter hour. Accounts will be issued weekly and payable on issue.

The Company will provide Black Swan with a retainer of C\$50,000 (the "Retainer") to be held and applied by Black Swan on account of: a) the amount of any outstanding fees and expenses remaining unpaid on termination of this engagement; and/or b) the Minimum Fee.

**Minimum Fee:** Should Black Swan's and Sellers' services hereunder be terminated for any reason (other than in connection with Black Swan's or Sellers' resignation, failure to provide the Advisory Services hereunder, gross negligence or wilful misconduct), the Company will pay to Black Swan a lump sum payment of C\$200,000 less the amount of any Hourly Fees previously paid to Black Swan prior to such termination.

**Expenses:** In addition to the foregoing compensation, the Company shall reimburse Black Swan and Sellers for their commercially reasonable out-of-pocket expenses in performing this agreement, including, but not limited to, travel, accommodation, communication and courier charges, and any taxes paid or payable thereon.

Such expenses may include (i) business class travel for any flight greater than three hours or outside of North America. Reimbursable expenses will be payable on presentation of invoices or payment records by Black Swan.

**Taxes:** All or part of the foregoing may be subject to federal Harmonized Services Tax and/or applicable provincial sales taxes, and/or equivalent value added, federal or state taxes in any other jurisdiction. Where such taxes are applicable, an additional amount equal to the amount of taxes payable thereon will be charged to and payable by the Company at the same time as the amounts to which such taxes apply.



## **7. Limitation on Liability and Indemnification**

Any and all claims which the Company may make against Black Swan and Sellers in connection with the provision of the Advisory Services shall be limited in recovery for proven damages to the extent of any fees paid to Black Swan under the terms of this retainer ("Fee Recovery Limit"). The Company hereby agrees to indemnify Black Swan and Sellers in respect of any and all claims in excess of the Fee Recovery Limit.

## **8. Survival of Terms and Termination**

This engagement shall take effect as of March 6, 2024 and shall terminate when Sellers ceases to be Restructuring Advisor to the Company, provided that: (a) the obligations of the Company (i) to indemnify Black Swan and Sellers, and (ii) to pay any amounts to Black Swan pursuant to this agreement including fees, expenses and taxes shall survive the termination or expiry of Black Swan's and Sellers' engagement hereunder.

## **9. Other Matters**

This agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario.

If any provision hereof shall be determined to be invalid or unenforceable in any respect, such determination shall not affect such provision in any other respect or any other provision hereof.

Headings used herein are for convenience of reference only and shall not affect the interpretation or construction of this agreement.

This Agreement may be executed by the parties hereto in counterparts electronically or physically, each of which counterparts shall be deemed an original, but both such counterparts shall together constitute one and the same document.

## **10. Notices**

All notices and other communications given under this letter shall be in writing and delivered by email or by personal delivery, if to the Company at:

Antibe Therapeutics Inc.  
15 Prince Arthur Ave.  
Toronto ON  
M5R 1B2

Attention: Dan Legault

Email: dan@antibethera.com





and if to Black Swan at its address at:

89 Little Morgan Bay Rd,  
Rosseau ON  
Canada  
POC 1J0

Email: esellers@blackswanadvisors.ca

or as each party may specify in a written notice to the other party. All such notices and communications shall be effective when delivered.

**11. Acceptance**

Please confirm that the foregoing is in accordance with your understanding by signing and returning the attached duplicate copy of this letter which shall thereupon constitute a binding agreement between the parties.

Yours truly,

**Black Swan Advisors Inc.**




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

Name: Edward A. Sellers

Title: President & Managing Director

**Accepted and Agreed**, this 17<sup>th</sup> day of March 2024, with effect as of March 6, 2024.

**Antibe Therapeutics Inc.**

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

Name: Dan Legault

Title: Chief Executive Officer



## SCHEDULE A

### Initial Scope of Advisory Services

- Advise the Company and assist members of senior management regarding strategic options and alternatives available to the Company to address its capital, liquidity, operations, or business affairs in view of the Company's current circumstances ("Strategic Review").
- Advise the Company and assist members of senior management with activities related to the Strategic Review, including but not limited to cash management, value preservation, stakeholder engagement and communications.
- Advise the Company and assist members of senior management in contingency planning and preparation ("Contingency Planning") in connection with any stay, postponement, moratorium, compromise or reduction of payment or performance of any obligation, or to arrange, re-organize, restructure, or otherwise address any of its capital, liquidity, operations, or business affairs ("Restructuring").
- Advise the Company and assist members of senior management in preparing to commence or defend any proceedings related to Contingency Planning or a Restructuring ("Restructuring Proceedings").
- Advise the Company and assist members of senior management regarding negotiations and processes related to the conduct of any Restructuring Proceedings, including, but not limited to the development of a plan for any Restructuring ("Restructuring Plan") and any related implementation processes, such as one or more Sales and Investor Solicitation Processes ("SISP") relating to some or all of the Company, its property and its business.
- Participate in meetings and negotiations with the Company's advisors, external stakeholders and interested parties, including but not limited to existing creditors, potential investors and financiers, their respective representatives and agents, and others related to the Strategic Review, Contingency Planning, Restructuring Proceedings, Restructuring and any other matters related to the Advisory Services.



SCHEDULE B

Black Swan Payment Instructions

Bank Name: [REDACTED]

SWIFT Code: [REDACTED]

ROUTING NO. [REDACTED]

Account Name: BLACK SWAN ADVISORS INC.

Account Holder Address: [REDACTED]

CAD Chequing Account Number: [REDACTED]

Bank Number: [REDACTED]

Branch Transit#: [REDACTED]

Branch Address: [REDACTED]

Bank Contact: [REDACTED]

Note:

All US Funds are sent to the Bank of Montreal using our correspondent bank:

[REDACTED]

SWIFT CODE: [REDACTED]

ABA [REDACTED]



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

Court File No.: \_\_\_\_\_

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ANTIBE THERAPEUTICS INC.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**PRE-FILING REPORT TO THE COURT OF  
DELOITTE RESTRUCTURING INC., AS  
PROPOSED MONITOR**

**Norton Rose Fulbright Canada LLP**  
222 Bay Street, Suite 3000  
Toronto, Ontario M5K 1E7 CANADA

**Evan Cobb** LSUC #55787N  
Tel: 416.216.1929  
Email: [evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)  
Fax: 416.216.3930

Lawyers for the Proposed Monitor