UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **October 30, 2026**

Pelthos Therapeutics Inc.

(Exact name of registrant as specified in its charter)

Nevada	**001-41964**	**86-3335449**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

4020 Stirrup Creek Drive, Suite 110 Durham, NC	**27703**
(Address of registrant's principal executive office)	(Zip code)

Registrant's telephone number, including area code: **(919) 908-2400**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

x Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

¨ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

¨ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

¨ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock, par value $0.0001 per share	PTHS	The NYSE American LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company x

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ¨

Item 1.01. Entry into a Material Definitive Agreement.

Merger Agreement

On October 30, 2026, Pelthos Therapeutics Inc., a Nevada corporation ("Pelthos" or "Public Company"), Credit Card Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Pelthos ("Merger Sub"), Credit Card Merger Sub II, LLC, a Delaware limited liability company and wholly owned subsidiary of Pelthos ("Merger Sub II"), Castle Creek Biosciences, Inc., a Delaware corporation ("Castle Creek" or "Merger Partner"), and Paragon Biosciences, LLC, a Delaware limited liability company, as the securityholder representative (the "Securityholder Representative"), entered into an Agreement and Plan of Merger (the "Merger Agreement"), pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Castle Creek (the "First Merger"), with Castle Creek continuing as a wholly owned subsidiary of Pelthos and the surviving corporation of the First Merger, and immediately following the First Merger, Castle Creek will merge with and into Merger Sub II (the "Second Merger" and together with the First Merger, the "Mergers"), with Merger Sub II continuing as a wholly owned subsidiary of Pelthos and the surviving company of the Second Merger. The Mergers, taken together, are intended to qualify for federal income tax purposes as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"). Capitalized terms used in this Current Report on Form 8-K but not otherwise defined have the meaning set forth in the Merger Agreement.

Consideration to Castle Creek Stockholders. At the effective time of the First Merger (the "Initial Effective Time"), each share of Merger Partner Common Stock and Merger Partner Preferred Stock issued and outstanding immediately prior to the Initial Effective Time (other than treasury shares and any Dissenting Shares) will be automatically converted into the right to receive in accordance with, and subject to the terms, conditions and procedures set forth in the Merger Agreement, the following consideration: (i) its Allocable Share of 5,200,000 shares of common stock, par value $0.0001 per share, of Pelthos ("Pelthos Common Stock") (the "Castle Creek Merger Shares"), with fractional shares rounded up to the nearest whole share, and (ii) its Allocable Share of any Contingent Shares, Milestone Payments and PRV Interest (each as defined below) and other payments required to be issued or paid pursuant to Article IX of the Merger Agreement. The "Allocable Share" of each share of Merger Partner Common Stock and Merger Partner Preferred Stock will be determined in accordance with the deemed liquidation event provisions of Castle Creek's certificate of incorporation (as in effect immediately prior to the Initial Effective Time) and, with respect to any consideration issued, released or paid following the closing, on a cumulative basis. Ten percent of the Castle Creek Merger Shares will be deposited in escrow at closing to secure the indemnification obligations of the Castle Creek securityholders and, subject to pending claims, will be released on the fifth business day following the second anniversary of the closing date.

"Milestone Payments" consist of (1) $50.0 million upon achievement of a specified clinical milestone for D-Fi on or before June 30, 2029, (2) $50.0 million upon the first commercial sale of D-Fi in the United States, (3) $50.0 million upon D-Fi net sales first reaching $100.0 million in any trailing twelve-month period, (4) $75.0 million upon D-Fi net sales first reaching $250.0 million in any trailing twelve-month period and (5) $75.0 million upon D-Fi net sales first reaching $500.0 million in any trailing twelve-month period, in each case net of certain contingent expenses. "Contingent Shares" consist of, if FDA approval of D-Fi is received on or prior to March 31, 2036, 5,800,000 shares of Pelthos Common Stock, subject to reduction for certain contingent expenses and by 5% for each complete calendar quarter elapsed after March 31, 2031 and on or before the approval date. "PRV Interest" consists of the holders of Merger Partner Common Stock and Merger Partner Preferred Stock's right, title and interest in and to 80% of the net proceeds from the sale of any priority review voucher granted by the FDA in connection with the approval of D-Fi. The amount and composition of any Milestone Payment or priority review voucher payment may be adjusted to include shares of Pelthos Common Stock to preserve the intended tax treatment of the Mergers, subject to a share cap. Pelthos may set off such contingent consideration or other amounts payable to the Castle Creek securityholders by losses relating to certain consideration matters or fraud, so long as (i) Pelthos has obtained a final, non-appealable judgment with respect to such losses, (ii) the Securityholder Representative has agreed in writing to the set-off or (iii) such losses are claimed in good faith by Pelthos or another indemnified party and remain pending and unresolved as of the date such payment would otherwise become payable, subject to Pelthos paying any such withheld amount that is not ultimately set off against such losses to the Castle Creek securityholders following final resolution of such pending claim.

Based on the number of Castle Creek Merger Shares and the capitalization of Pelthos as of the date of the Merger Agreement, immediately following the closing of the First Merger, and before giving effect to the PIPE Financing (as defined below), Castle Creek stockholders as of immediately prior to the First Merger are expected to own approximately 32.5%, and Pelthos securityholders as of immediately prior to the First Merger are expected to own approximately 67.5% on a fully-diluted basis, of Pelthos Common Stock, excluding any Contingent Shares.

Treatment of Castle Creek Equity Awards. Outstanding Merger Partner Options will be terminated immediately prior to the Initial Effective Time. Merger Partner Warrants that have not been exercised in full will be treated in accordance with their terms and thereafter terminated immediately prior to the Initial Effective Time.

Representations, Warranties and Covenants. Each of Pelthos and Castle Creek has agreed to customary representations, warranties and covenants in the Merger Agreement, including, among others, covenants relating to (i) obtaining the requisite approvals of their respective stockholders, (ii) non-solicitation of alternative acquisition proposals, (iii) the conduct of their respective businesses during the period between the date of signing the Merger Agreement and the closing of the Mergers, (iv) Pelthos filing with the Securities and Exchange Commission (the "SEC") a registration statement on Form S-4 (the "Form S-4") which includes an information statement (the "Information Statement"), (v) filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") and (vi) Pelthos using its commercially reasonable efforts to maintain the existing listing of the Pelthos Common Stock on the NYSE American and causing the shares of Pelthos Common Stock to be issued in connection with the Mergers to be approved for listing on the NYSE American at or prior to the Initial Effective Time. The representations and warranties of Castle Creek survive the closing until the second anniversary of the closing date, and the Castle Creek securityholders have agreed to indemnify Pelthos for certain losses.

The consummation of the Mergers is subject to certain closing conditions, including, among other things, (i) the Merger Agreement having been approved by means of written consent by the requisite stockholders of Castle Creek, (ii) the issuance of Pelthos Common Stock in the First Merger and the PIPE Financing pursuant to Sections 710 through 713 of the NYSE American Company Guide (the "Share Issuances") having been approved by means of written consent by the requisite Pelthos stockholders, (iii) the Form S-4 having become effective and 20 calendar days having elapsed following the mailing of the Information Statement, (iv) no governmental entity of competent jurisdiction having enacted, issued, promulgated, enforced or entered any order, executive order, stop order, stay, decree, judgment or injunction (preliminary or permanent) or statute, rule or regulation which is in effect and which has the effect of making the Mergers illegal or otherwise prohibiting their consummation, (v) the shares of Pelthos Common Stock to be issued in the Share Issuances having been approved for listing, subject to official notice of issuance, on the NYSE American, (vi) the expiration or termination of the waiting period under the HSR Act, (vii) entry into an escrow agreement and an exchange agent agreement and (viii) the PIPE Financing having been consummated or being consummated concurrently with or immediately before the closing of the Mergers. Each party's obligation to consummate the Mergers is also subject to other specified customary conditions, including the accuracy of the representations and warranties of the other party, subject to specified materiality standards, the performance in all material respects by the other party of its obligations under the Merger Agreement, and the absence of any material adverse effect affecting the other party that is continuing on the closing date.

Termination Rights. The Merger Agreement contains certain termination rights of each of Pelthos and Castle Creek, including, subject to compliance with the applicable terms of the Merger Agreement, the right of each party to terminate if a final and nonappealable order permanently prohibits the Mergers, if, prior to receipt of the requisite stockholder consent, the other party's board changes its recommendation or the other party materially breaches its non-solicitation or stockholder consent obligations, if the First Merger has not been consummated by February 1, 2027 (subject to automatic extension to March 31, 2027 in certain circumstances where the Form S-4 has not become effective in time and all other conditions are satisfied), upon an uncured breach by the other party that would cause a closing condition not to be satisfied, and, in the case of Castle Creek, if the requisite Pelthos stockholder consent is not delivered within one business day of signing or, in the case of Pelthos, if the requisite Castle Creek stockholder consent is not delivered within five business days after the Form S-4 becomes effective. All fees and expenses incurred in connection with the Merger Agreement will be paid by the party incurring such expenses, whether or not the Mergers are consummated, except that (a) Pelthos and Castle Creek will equally share (i) all fees and expenses of the exchange agent and (ii) all fees and expenses, other than accountants' and attorneys' fees, incurred with respect to the printing, filing and mailing of the Form S-4 and the Information Statement, (b) Pelthos will pay all filing fees under the HSR Act and (c) if the Mergers are consummated, Pelthos will pay Castle Creek's transaction expenses to the extent not paid by Castle Creek, including funding a $500,000 expense reserve for the Securityholder Representative, any unused portion of which will be returned to Pelthos.

Board of Directors. Immediately following the Initial Effective Time, the board of directors of Pelthos (the "Board") will increase in size from eight directors to ten directors, including the eight members of the Board as of the closing and two new directors designated by Castle Creek.

The foregoing description of the Merger Agreement does not purport to be complete and is qualified in its entirety by the full text of the Merger Agreement, a copy of which is filed as Exhibit 2.1 hereto and is incorporated by reference herein. The Merger Agreement has been attached to provide investors with information regarding its terms. It is not intended to provide any other factual information about Pelthos, Castle Creek, Merger Sub or Merger Sub II. In particular, the representations, warranties and covenants of each party set forth in the Merger Agreement have been made only for the purposes of, and were and are solely for the benefit of the parties to, the Merger Agreement, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosure letters made for the purposes of allocating contractual risk between the parties to the Merger Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. These confidential disclosure letters contain information that modifies, qualifies and creates exceptions to the representations and warranties and certain covenants set forth in the Merger Agreement. Accordingly, the Merger Agreement is included with this filing only to provide investors with information regarding the terms of the Merger Agreement and not to provide investors with any other factual information regarding the parties or their respective businesses.

Securities Purchase Agreement

On October 30, 2026, Pelthos entered into a securities purchase agreement (the "Securities Purchase Agreement") with certain investors, including Ligand Pharmaceuticals Incorporated ("Ligand"), Nomis Bay Ltd ("Nomis Bay"), and Marshman Fund Trust II U/A/D 5/1/08 ("Marshman") and certain other investors (collectively, the "PIPE Investors"), and a specified buyer (the "Option Buyer"), pursuant to which (a) the PIPE Investors have agreed to subscribe for and purchase an aggregate of 57,500 shares of Series B Convertible Preferred Stock, par value $0.0001 per share (the "Series B Preferred Stock"), each with a stated value of $1,000, and warrants to purchase an aggregate of 496,951 shares of Pelthos Common Stock (the "Warrants"), for an aggregate purchase price of approximately $57.5 million (such transaction, the "PIPE Financing" and together with the Mergers, the "Transactions") payable in cash, and, in the case of certain PIPE Investors, in part by the transfer to Pelthos of Bridge Notes (as defined below), (b) the Option Buyer may elect to purchase up to $26.6 million of Series B Preferred Stock (or, in certain circumstances, Series D Preferred Stock (as defined below)), and Warrants, prior to November 14, 2026 (the "Second Signing Date"), and (c) certain existing stockholders (each, an "Other Bridge Buyer") of Castle Creek that exercise pre-emptive rights to purchase Bridge Notes (as defined below) may subscribe for and purchase an additional $1.5 million of Series B Preferred Stock (or, in certain circumstances, shares of Series D Convertible Preferred Stock, par value $0.0001 per share (the "Series D Preferred Stock"), each with a stated value of $1,000) and Warrants, prior to the Second Signing Date. The maximum potential size of the PIPE Financing, including the Bridge Financing, is $80.0 million.

The PIPE Financing is expected to close immediately prior to the Initial Effective Time. The purchase price payable by certain PIPE Investors will be satisfied in part by the transfer to Pelthos of certain convertible bridge promissory notes issued by Castle Creek to such PIPE Investors (the "Bridge Notes"). The closing of the PIPE Financing is conditioned upon, among other things, the satisfaction or waiver of all conditions to the closing of the Mergers, approval of the listing of the shares of Pelthos Common Stock issuable upon conversion of the Series B Preferred Stock and Series D Preferred Stock, as applicable, and upon exercise of the Warrants on the NYSE American, and Pelthos receiving at least $57.5 million (in cash or cancellation of Bridge Notes) from the investors party to the Securities Purchase Agreement at closing. Pelthos intends to use the proceeds from the PIPE Financing to repay certain indebtedness of Castle Creek and for working capital and general corporate purposes. The Series B Preferred Stock and Series D Preferred Stock, the Warrants and the shares of Pelthos Common Stock issuable upon conversion of the Series B Preferred Stock and Series D Preferred Stock or upon exercise of the Warrants will be issued pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the resale of the shares of Pelthos Common Stock issuable upon (i) conversion of the Series B Preferred Stock, Series D Preferred Stock and (ii) exercise of the Warrants will be registered pursuant to a resale registration statement (the "Registration Statement").

The foregoing descriptions of the Securities Purchase Agreement and the Bridge Notes do not purport to be complete and are qualified in their entirety by reference to the full text of the Securities Purchase Agreement, which is filed herewith as Exhibit 10.1 and is incorporated by reference herein.

Warrants

The Warrants are exercisable beginning on the date that is 180 days after the closing of the Transactions and will expire on the tenth anniversary of their issuance. The Warrants may be exercised for cash or on a cashless basis. If a registration statement covering the issuance of the underlying shares is not effective at the time of exercise, they may be exercised only on a cashless basis. A holder may not exercise a Warrant to the extent that the holder, together with its affiliates, would beneficially own more than 4.99% or 9.99% of the Company's outstanding common stock immediately after giving effect to the exercise. The holder may increase or decrease this percentage, up to 9.99%, and any increase takes effect 61 days after notice to the Company. The exercise price and the number of shares issuable are subject to customary adjustment for stock dividends, splits, combinations and similar events. Holders are also entitled to participate in certain distributions and rights offerings made to holders of common stock. In a fundamental transaction, holders are entitled to receive the consideration they would have received had they exercised the Warrants immediately beforehand.

The foregoing description of the Warrants does not purport to be complete and is qualified in its entirety by reference to the full text of the forms of each Warrant, which is filed herewith as Exhibit 4.2 and are incorporated by reference herein.

Lock-Up Agreements

Concurrently with the execution of the Merger Agreement and the Securities Purchase Agreement, each of (i) certain Castle Creek securityholders and (ii) certain of the PIPE Investors have entered into lock-up agreements (collectively, the "Lock-Up Agreements"), pursuant to which such parties have agreed not to, except in limited circumstances, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Pelthos Common Stock received in the Mergers or any shares of Series B Preferred Stock purchased in the PIPE Financing or shares of Pelthos Common Stock issuable upon conversion thereof (in the case of the PIPE Investors), from the closing of the Mergers until the date that is 180 days after the closing date, subject to certain exceptions set forth in each of the Lock-Up Agreements.

The foregoing description of the Lock-Up Agreements does not purport to be complete and is qualified in its entirety by reference to the full text of the forms of each Lock-Up Agreement, which are filed herewith as Exhibit 10.3 and Exhibit 10.4 are incorporated by reference herein.

Support Agreements

Concurrently with the execution and delivery of the Merger Agreement, certain executive officers, directors and stockholders of Castle Creek (solely in their respective capacities as Castle Creek stockholders) who beneficially own an aggregate of approximately 55.9% of the outstanding Merger Partner Common Stock as of October 30, 2026 have entered into support agreements with Pelthos and Castle Creek to vote (or deliver a written consent with respect to) all of their shares of Merger Partner Capital Stock (i) in favor of the adoption of the Merger Agreement and the approval of the First Merger, and (ii) against any competing acquisition proposal and against any agreement or transaction that would reasonably be expected to impede, interfere with, delay, postpone, discourage or materially and adversely affect the Mergers, the PIPE Financing or any of the other transactions contemplated by the Merger Agreement (the "Support Agreements"). In the event of a Merger Partner Board Recommendation Change (as defined in the Merger Agreement), the support obligations described in the previous sentence will apply to 50% of the shares held by each stockholder executing a Support Agreement. In the event the Merger Agreement is terminated in certain circumstances, the supporting stockholders have committed to vote against competing proposals presented to Castle Creek prior to the termination of the Merger Agreement for 12 months following such termination of the Merger Agreement and to vote against all other competing proposals for a period for 6 months following such termination of the Merger Agreement.

The foregoing description of the Support Agreements does not purport to be complete and is qualified in its entirety by reference to the full text of the form of the Support Agreement, which is filed herewith as Exhibit 10.2 and is incorporated by reference herein.

Registration Rights Agreement

At the closing of the PIPE Financing, Pelthos will enter into a registration rights agreement (the "Registration Rights Agreement") with the PIPE Investors pursuant to which the PIPE Investors will be entitled to certain resale registration rights with respect to the shares of Pelthos Common Stock issuable upon (i) conversion of the Series B Preferred Stock issued to the PIPE Investors and any Series D Preferred Stock issued to the Option Buyer and any Other Bridge Buyer, and (ii) upon exercise of the Warrants. Pursuant to the Registration Rights Agreement, Pelthos will be required to prepare and file the Registration Statement with the SEC by the later of the 30th calendar day after the closing date of the PIPE Financing and 15 calendar days after the due date (including any extensions granted by a timely-filed Form 12b-25) of the next periodic report required pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Pelthos shall use its reasonable best efforts to cause the Registration Statement to be declared effective by the SEC by the earlier of (A) the 90th calendar day after the closing date of the PIPE Financing (or the 120th calendar day if subject to a full review by the SEC) and (B) the 5th business day after the date Pelthos is notified (orally or in writing, whichever is earlier) by the SEC that such applicable Registration Statement will not be reviewed or will not be subject to further review, and to keep the Registration Statement effective until the earliest of the date all registrable securities may be sold without restriction under Rule 144, have been sold, or the fifth anniversary of the closing date.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the form of the Registration Rights Agreement, which is filed herewith as Exhibit 10.5 and is incorporated by reference herein.

Stockholder Approval of Transaction

In connection with the Transactions, on October 30, 2026, Ligand and certain other stockholders, holding an aggregate of approximately 3.0 million shares of Pelthos Common Stock (including shares underlying the Series A Preferred Stock on an as-converted basis), constituting approximately 56.2% of the voting power of the outstanding shares of Pelthos Common Stock, executed the Public Company Written Consent approving the Share Issuances. No further approval of the stockholders of Pelthos is required to approve the Share Issuances or the Mergers.

As promptly as practicable, Pelthos will file with the SEC a registration statement on Form S-4, including the preliminary Information Statement describing the Merger Agreement and the transactions contemplated thereby, including the Mergers. A definitive version of the Information Statement will be filed with the SEC and mailed to stockholders of Pelthos thereafter.

Certificate of Designation

In connection with the PIPE Financing, Pelthos will file a Certificate of Designation of Series B Convertible Preferred Stock (the "Certificate of Designation") with the Nevada Secretary of State to create a new series of preferred stock designated as the Series B Preferred Stock. After a Series D Trigger Event (as defined in the Securities Purchase Agreement), Pelthos will file a Certificate of Designation of Series D Convertible Preferred Stock (the "Series D Certificate of Designation") with the Nevada Secretary of State to create a new series of preferred stock designated as the Series D Preferred Stock. The Series D Certificate of Designation will have terms substantially similar to the terms of the Certificate of Designation, except with respect to the voting conversion price applicable to the Series D Preferred Stock. The following is a description of the principal terms of the Series B Preferred Stock, which are set forth in the Certificate of Designation.

General. Pursuant to the Certificate of Designation, Pelthos will authorize 150,000 shares of Series B Preferred Stock and each share of Series B Preferred Stock will have a stated value of $1,000 per share (the "Stated Value"), subject to adjustment for stock splits, stock dividends, recapitalizations and similar events. The Board may reduce the number of authorized shares of Series B Preferred Stock to a number not less than the number then outstanding or issuable pursuant to the Securities Purchase Agreement. At the consummation of the PIPE Financing, Pelthos will issue 57,500 shares of Series B Preferred Stock. When issued, the Series B Preferred Stock will be fully paid and non-assessable. The holders of Series B Preferred Stock ("Holders") may transfer their shares of Series B Preferred Stock without the consent of Pelthos, except as otherwise required by the Securities Purchase Agreement.

Dividends and Distributions. The holders of Series B Preferred Stock will be entitled to receive dividends when and as declared by the Board, from time to time, in its sole discretion, payable in cash on the Stated Value out of funds legally available therefor. In addition, if Pelthos declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of Pelthos Common Stock (other than certain stock dividends), the holders of Series B Preferred Stock will be entitled to participate in such distribution, on an as-converted basis (without regard to limitations on conversion), subject to the beneficial ownership limitation set forth in the Certificate of Designation, with any portion exceeding such limitation held in abeyance until it may be received without exceeding such limitation.

Conversion at Option of Holder. Each holder of Series B Preferred Stock may convert all, or any part, of its outstanding Series B Preferred Stock, at any time on or after the initial issuance date at such holder's option, into a number of shares of Pelthos Common Stock equal to the conversion amount (the Stated Value plus any declared and unpaid dividends and any other amount owed to such holder under the Certificate of Designation or the other transaction documents) divided by the "Conversion Price" of $19.67, which is subject to proportional adjustment upon the occurrence of any stock split, stock dividend, stock combination, recapitalization and/or similar transactions. Any fractional share resulting from a conversion will be rounded up to the nearest whole share. Pelthos is required to deliver the shares of Pelthos Common Stock issuable upon conversion by the first trading day following receipt of a conversion notice. Following the occurrence of at least three failures to timely deliver conversion shares, Pelthos will be required to pay the applicable holder, for each day such delivery is not timely effected, an amount in cash equal to 0.5% of the product of the number of shares not timely delivered and the average VWAP (as defined in the Certificate of Designation) of the Pelthos Common Stock during the applicable period. Holders are also entitled to certain "buy-in" remedies if Pelthos fails to timely deliver conversion shares.

Voluntary Adjustment Right. Subject to the rules and regulations of the NYSE American, Pelthos has the right, at any time, with the prior written consent of the "Series B Required Holders" (as defined in the Securities Purchase Agreement), to reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board.

Purchase Rights. If at any time Pelthos grants, issues or sells any options, convertible securities, or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Pelthos Common Stock (the "Purchase Rights"), then each holder of Series B Preferred Stock will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Pelthos Common Stock acquirable upon complete conversion of all the Series B Preferred Stock held by such holder (without regard to any limitations on conversion) immediately prior to the applicable record date, subject to the Maximum Percentage (as defined in the Certificate of Designation), with any portion exceeding the Maximum Percentage held in abeyance until the earlier of the time such holder may receive it without exceeding the Maximum Percentage and the 12-month anniversary of the applicable record date.

Voting Rights. The holders of the Series B Preferred Stock will be entitled to notice of any stockholders' meeting and will have the right to vote together with the holders of Pelthos Common Stock (and with the holders of Pelthos's Series A Convertible Preferred Stock (the "Series A Preferred Stock") on an as-converted basis), as a single class, in an amount equal to the voting power of the aggregate number of shares of Pelthos Common Stock that would be issuable upon conversion of such shares of Series B Preferred Stock, as if the conversion price were $16.54 (the "Series B Voting Conversion Price"), subject to the Maximum Percentage (or as otherwise required by applicable law). The Series B Voting Conversion Price is subject to proportional adjustment upon any stock split, stock combination or similar transaction. To the extent a separate class or series vote of the Series B Preferred Stock is required under Nevada law, the affirmative vote or consent of the Series B Required Holders, voting together with the holders of Series A Preferred Stock and not by separate series unless required under Nevada law, will constitute approval of such action.

The foregoing description of the Certificate of Designation does not purport to be complete and is qualified in its entirety by reference to the full text of the form of the Certificate of Designation, which is filed herewith as Exhibit 3.1 and is incorporated by reference herein.

Amendment and Restatement of Venture Loan and Security Agreement

On October 30, 2026, concurrently with the execution of the Merger Agreement, Pelthos, LNHC, Inc., a Delaware corporation and wholly owned subsidiary of Pelthos ("LNHC"), and Channel Pharmaceutical Corporation, a Nevada corporation and wholly owned subsidiary of Pelthos ("Channel" and, together with Pelthos and LNHC, the "Borrowers"), together with Merger Sub and Merger Sub II as additional co-borrowers, entered into an Amended and Restated Venture Loan and Security Agreement (the "A&R Loan Agreement") with Horizon Technology Finance Corporation, a Delaware corporation, as collateral agent, and the lenders party thereto from time to time (collectively, "Horizon"), which amends and restates in its entirety the Venture Loan and Security Agreement, dated January 12, 2026, among the Borrowers and Horizon (the "Loan Agreement") in order to, among other things, (i) provide for the funding in full on the effective date of the A&R Loan Agreement (the "A&R Effective Date") of $10.0 million of additional term loans (together with the term loans outstanding under the Loan Agreement, the "Term Loans") that remained unfunded under the Loan Agreement and (ii) obtain Horizon's consent to the Mergers. The $30.0 million of Term Loans outstanding immediately prior to its effectiveness remain outstanding and secured under the A&R Loan Agreement. Following the funding of the additional Term Loans on the A&R Effective Date, $40.0 million in aggregate principal amount of Term Loans were outstanding under the A&R Loan Agreement, and the aggregate principal amount of the facility remains up to $50.0 million.

Pursuant to the A&R Loan Agreement, Horizon funded $10.0 million of additional Term Loans, in four tranches of $2.5 million each, on the A&R Effective Date. The proceeds of these additional Term Loans will be used to pay the commitment fee and Horizon's expenses, and to partially fund, on the closing date of the Mergers, the repayment in full of Castle Creek's existing venture loan facility with Horizon and of certain unsecured subordinated promissory notes issued by a subsidiary of Castle Creek, together with certain transaction costs, and for working capital and general corporate purposes. The A&R Loan Agreement also provides for up to an additional $10.0 million of Term Loans, in two tranches of $5.0 million each, which Horizon may elect to fund in its sole discretion on or prior to December 31, 2027, subject to, among other conditions, the Borrowers achieving trailing twelve-month net revenue of at least $70.0 million.

Borrowings under the A&R Loan Agreement accrue interest at a floating rate equal to the prime rate plus 3.75%, with the prime rate subject to a floor of 6.75%. The Term Loans are repayable in monthly interest-only payments from March 1, 2026 until February 1, 2029 (the "Interest-Only Payment Period"). After the expiration of the Interest-Only Payment Period, beginning on March 1, 2029, the Term Loans will be repayable in 24 equal monthly payments of principal and accrued interest until maturity. Alternatively, if the Borrowers achieve a trailing twelve-month consolidated net revenue of at least $75.0 million, the Term Loans will be repayable in monthly interest-only payments from March 1, 2026 until February 1, 2030 (the "Extended Interest-Only Payment Period"). After the expiration of the Extended Interest-Only Payment Period, the Term Loans will be repayable in 12 equal monthly payments of principal and accrued interest until maturity. The additional Term Loans will begin amortizing on the same date as the existing Term Loans, and all Term Loans will mature on January 31, 2031. Upon an event of default, the interest rate will increase by 4.00% per annum. In addition, the Borrowers are required to make a final payment of $125,000 with respect to each of the four $2.5 million tranches funded on the A&R Effective Date and $250,000 with respect to each of the two $5.0 million tranches, if funded, in each case upon the earliest of repayment in full of the applicable Term Loan, an event of default and demand by Horizon, or maturity.

At the Borrowers' option, the Borrowers may prepay all of the outstanding Term Loans, subject to a prepayment premium equal to (a) 3.0% of the Term Loans being prepaid if the prepayment is made during the Interest-Only Payment Period or Extended Interest-Only Payment Period, as applicable; (b) 2.0% of the Term Loans being prepaid if the prepayment occurs within twelve (12) months after the Interest-Only Payment Period or Extended Interest-Only Payment Period, as applicable; and (c) 1.0% of the Term Loans being prepaid if the prepayment occurs any time thereafter.

In connection with the A&R Loan Agreement, the Borrowers paid Horizon a commitment fee of $100,000 (against which a $125,000 good faith deposit previously delivered to Horizon was credited, after first being applied to Horizon's expenses) and will pay a commitment fee equal to 1.00% of the principal amount of each of the two future $5.0 million tranches, if funded. Pelthos will also issue to Horizon, on the A&R Effective Date, warrants to purchase 37,292 shares of Pelthos Common Stock at an exercise price of $16.09 per share with respect to the additional Term Loans funded on such date and will issue additional warrants upon the funding of any further tranches. The warrants previously issued to Horizon remain outstanding in accordance with their terms.

Under the A&R Loan Agreement, Horizon consented to the formation of Merger Sub and Merger Sub II, the execution and performance of the Merger Agreement and the consummation of the Mergers, the cancellation of the Bridge Notes in exchange for a credit against the purchase price in the PIPE Financing, and the payment of the Castle Creek payoff amounts and transaction costs described above, provided that the Mergers are consummated no later than March 31, 2027 (or such later date as Horizon may agree). No later than the closing date of the Mergers, Castle Creek Biosciences, LLC, a wholly owned subsidiary of Castle Creek, will join the A&R Loan Agreement as a co-borrower and grant Horizon a first priority security interest (subject to permitted liens) in substantially all of its assets, Pelthos will pledge the equity of Merger Sub II, and the parties will enter into an amended and restated intercreditor agreement with Ligand with respect to Castle Creek's existing royalty financing arrangement. The covenants under the A&R Loan Agreement were also modified to permit the indebtedness, liens, investments and payments contemplated by the Transactions, including Castle Creek's existing royalty financing with Ligand and the Milestone Payments, Contingent Shares and PRV Interest payable under the Merger Agreement, except that no cash Milestone Payment may be paid while certain specified events of default exist or would result therefrom. The Borrowers may not amend or waive the Merger Agreement in any manner materially adverse to Horizon without Horizon's consent, and failure to comply with the Merger-related covenants constitutes an event of default under the A&R Loan Agreement.

The foregoing description of the A&R Loan Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the A&R Loan Agreement, which is filed herewith as Exhibit 10.6 and is incorporated by reference herein.

Amendment and Waiver to Senior Secured Convertible Notes

On October 30, 2026, concurrently with the execution of the Merger Agreement, Pelthos entered into a First Amendment and Waiver to Senior Secured Convertible Notes (each, a "Notes Amendment" and collectively, the "Notes Amendments") with each of certain holders of Pelthos's Senior Secured Convertible Notes dated November 6, 2025 (the "Convertible Notes"), issued pursuant to a securities purchase agreement dated as of November 6, 2025, in order to permit the Transactions, including the related financing transactions, and to make certain other changes to the terms of the Convertible Notes. The Notes Amendments are identical in form and became effective upon their execution by holders representing at least 65% of the aggregate principal amount of the Convertible Notes then outstanding (the "Required Holders"). Pursuant to the terms of the Convertible Notes, an amendment or waiver approved by the Required Holders is binding upon all existing and future holders of the Convertible Notes.

The Notes Amendments, among other things, (i) amended the definition of "Permitted Senior Indebtedness" in the Convertible Notes to increase the amount permitted for credit facilities with one or more financial institutions from $50.0 million to $80.0 million and (ii) made certain other modifications to the definition of "Change of Control" and the provisions relating to Pelthos's failure to timely deliver shares of common stock upon conversion. In addition, pursuant to the Notes Amendments, the Required Holders waived certain covenants in connection with the Transactions, including the covenants with respect to change of control, transactions with affiliates, indebtedness, Liens and restriction on transfers of assets, and consented to the consummation of the Transactions.

The foregoing description of the Notes Amendments does not purport to be complete and is qualified in its entirety by reference to the full text of the form of Notes Amendment, which is filed herewith as Exhibit 10.7 and is incorporated by reference herein.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 is incorporated into this Item 2.03 by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The securities to be sold to the PIPE Investors, the Option Buyer and any Other Bridge Buyers will not be registered under the Securities Act, and will be issued and sold in reliance on the exemption from registration requirements thereof provided by Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D promulgated thereunder as a transaction by an issuer not involving a public offering. The shares of Pelthos Common Stock to be issued in the First Merger are expected to be registered under the Securities Act pursuant to the Form S-4. The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in Item 5.03 below is incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Amendment to CEO Employment Agreement

On October 30, 2026, Pelthos and Scott Plesha, its Chief Executive Officer, entered into a Second Amendment to his Executive Employment Agreement dated as of July 1, 2025, as amended (the "Plesha Amendment"). The Plesha Amendment expands Mr. Plesha's severance benefits by providing for a prorated annual bonus based on actual performance, for the year in which Mr. Plesha's employment terminates.

The foregoing description is qualified in its entirety by reference to the full text of the agreement, which is filed as Exhibit 10.9 to this Current Report on Form 8-K and incorporated herein by reference.

On October 28, 2026, the Compensation Committee of the Board approved an increase to Mr. Plesha's annual base salary from $500,000 to $550,000 and approved an increase to his target annual bonus opportunity from 50% of base salary to 60% of base salary.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On October 30, 2026, following the Board's approval of an amendment (the "Amendment") to the Certificate of Designation of Rights and Preferences of Series A Convertible Preferred Stock (the "Series A Certificate of Designation"), the Company's stockholders and the Required Holders (as defined in the Series A Certificate of Designation) approved the Amendment. The Amendment will make certain modifications to the provisions relating to Pelthos' failure to timely deliver shares of common stock upon conversion of the Series A Preferred Stock, and to the Company's obligations upon the occurrence of a fundamental transaction.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment, which is filed as Exhibit 3.2 to this Current Report on Form 8-K and incorporated herein by reference.

Item 5.07. Submission of Matters to a Vote of Security Holders.

The disclosure set forth above in the paragraph titled "*Stockholder Approval of Transaction*" in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.07.

Item 7.01. Regulation FD Disclosure.

On October 30, 2026, Pelthos issued a press release announcing the execution of the Merger Agreement and the Securities Purchase Agreement. The press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference, except that the information contained on the websites referenced in the press release is not incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

Exhibit No.	Description
2.1*	Agreement and Plan of Merger, dated as of October 30, 2026, by and among Pelthos Therapeutics Inc., Credit Card Merger Sub, Inc., Credit Card Merger Sub II, LLC, Castle Creek Biosciences, Inc., and Paragon Biosciences, LLC.
3.1	Form of Certificate of Designation of Series B Convertible Preferred Stock of Pelthos Therapeutics Inc., to be filed with the Secretary of State of the State of Nevada.
3.2	Form of Amendment to Certificate of Designation of Series A Convertible Preferred Stock of Pelthos Therapeutics Inc., to be filed with the Secretary of State of the State of Nevada.
4.1	Form of Warrant issued pursuant to Venture Loan and Security Agreement dated as of January 13, 2026, by and among Pelthos Therapeutics Inc., LNHC, Inc., Channel Therapeutics Corporation and Horizon Technology Finance Corporation (incorporated by reference to Exhibit 4.1 to the registrant's Current Report on Form 8-K filed on January 14, 2026).
4.2	Form of PIPE Warrant.
10.1	Securities Purchase Agreement, dated as of October 30, 2026, by and among Pelthos Therapeutics Inc. and each of the investors party thereto.
10.2	Form of Support Agreement, by and among Pelthos Therapeutics Inc., Castle Creek Biosciences, Inc. and certain stockholders of Castle Creek Biosciences, Inc.
10.3	Form of Lock-Up Agreement (certain securityholders of Castle Creek Biosciences, Inc.)
10.4	Form of Lock-Up Agreement (PIPE Financing Investors)
10.5	Form of Registration Rights Agreement.
10.6	Amended and Restated Venture Loan and Security Agreement, dated as of October 30, 2026, by and among Pelthos Therapeutics Inc., LNHC, Inc., Channel Pharmaceutical Corporation, Credit Card Merger Sub, Inc., Credit Card Merger Sub II, LLC, Horizon Technology Finance Corporation, as collateral agent, and the lenders party thereto from time to time.
10.7	Form of First Amendment and Waiver to Senior Secured Convertible Notes, by and between Pelthos Therapeutics Inc. and the holder party thereto.
10.8	Second Amendment to Executive Employment Agreement, dated as of October 30, 2026, between Pelthos Therapeutics Inc. and Scott Plesha.
99.1	Press Release, dated October 30, 2026.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Exhibits and/or schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant hereby undertakes to furnish supplementally copies of any of the omitted exhibits and schedules upon request by the SEC; provided, however, that the registrant may request confidential treatment pursuant to Rule 24b-2 under the Exchange Act, for any exhibits or schedules so furnished.

Cautionary Note Regarding Forward-Looking Statements

This Current Report on Form 8-K and the exhibits attached hereto contain forward-looking statements (including within the meaning of Section 21E of the Exchange Act and Section 27A of the Securities Act) concerning Pelthos, Castle Creek, the combined company, the Transactions, and other matters. These forward-looking statements include, but are not limited to, statements regarding the proposed transaction involving Pelthos and Castle Creek. Forward-looking statements generally include statements that are speculative in nature and depend upon or refer to future events or conditions, and include words such as "may," "will," "should," "would," "could," "might," "expect," "anticipate," "plan," "likely," "believe," "estimate," "project," "intend," "seek," "target," "potential," "predict," "forecast," "continue," and other similar expressions or the negative or plural of these words, or other similar expressions that are speculative or indicate future events or prospects. Statements that are not historical facts are forward-looking statements. Forward-looking statements include, but are not limited to, expectations regarding the proposed transaction; the potential benefits of the proposed transaction, including the sufficiency of the combined company's capital resources; the expected timing of the closing of the proposed transaction; statements regarding the potential achievement of, and expectations regarding, Castle Creek's and Pelthos's programs, including the potential achievement of any milestone; receipt of FDA approval of D-Fi; issuance of any Contingent Shares in connection with the mergers or receipt of any priority review voucher; the continued listing of Pelthos on the NYSE American; and the anticipated benefits of the proposed transaction and the combined company's opportunities, strategy and plans following the proposed transaction. Forward-looking statements are based on current beliefs and assumptions of management that are subject to risks and uncertainties and are not guarantees of future performance. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors, including, without limitation:

- the occurrence of any event, change or other circumstances that could give rise to the termination of the proposed transaction;
- the risk that Pelthos may be unable to obtain governmental and regulatory approvals and clearances required for the mergers, or required governmental and regulatory approvals and clearances may delay the proposed transaction or result in the imposition of conditions that could cause the parties to abandon the proposed transaction;
- risks related to disruption of management time from ongoing business operations due to the proposed transaction;
- the risk that any announcements relating to the proposed transaction could have adverse effects on the market price of Pelthos Common Stock;
- the risk of any unexpected costs or expenses resulting from the proposed transaction;
- the risk of any litigation relating to the proposed transaction;
- the risk that the proposed transaction and the related announcement could have an adverse effect on the ability of Pelthos and/or Castle Creek to retain and hire key personnel;
- the risk that problems may arise in successfully integrating the businesses of the companies, which may result in the combined company not operating as effectively and efficiently as expected;
- the risk that the combined company may be unable to achieve the anticipated benefits of the proposed transaction or it may take longer than expected to achieve those benefits and other important factors that could cause actual results to differ materially from those projected;
- the limited operating history of each company and their significant net losses incurred since inception;
- the need to raise additional capital to finance operations;
- uncertainties related to commercialization or market acceptance of FDA-approved products;
- the ability to advance product candidates through preclinical and clinical development;
- the ability to obtain regulatory approval for, and ultimately commercialize, the combined company's product candidates;
- the outcome of early clinical trials for product candidates, including the ability of those trials to satisfy relevant governmental or regulatory requirements;
- the ability of Pelthos, Castle Creek and the combined company to protect their respective intellectual property and proprietary technologies;
- reliance on third parties, contract manufacturers, and contract research organizations;
- the risk that the concurrent private financing is not consummated;
- the risk that the conditions to the closing of the proposed transaction are not satisfied in a timely manner or at all;
- product liability lawsuits, which could cause Pelthos to incur substantial liabilities and limit commercialization of any products that Pelthos may develop;
- current and future healthcare reform legislation or regulation, which may increase the difficulty and cost for Pelthos to commercialize products, may adversely affect the prices Pelthos may obtain and may have a negative impact on Pelthos's business and results of operations;
- delays or disruptions in the supply chain and manufacturing of Pelthos's products;
- the seasonal nature of Pelthos's business;
- the effects of inflation or trade tariffs; and

- market, economic and other conditions, Pelthos's current liquidity position, Pelthos's ability to continue as a going concern, to maintain the listing of Pelthos Common Stock on the NYSE American, to manage costs and execute on its operational and budget plans, and to achieve its financial goals.

The foregoing review of important factors that could cause actual events to differ from expectations should not be construed as exhaustive and should be read in conjunction with statements that are included herein and elsewhere, including the risk factors included in Pelthos's most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K filed with the SEC. In light of these risks, uncertainties and assumptions, the events described in the forward-looking statements might not occur or might occur to a different extent or at a different time than described. Pelthos and Castle Creek can give no assurance that the conditions to the proposed transaction will be satisfied. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. All subsequent written and oral forward-looking statements concerning the matters addressed herein and attributable to Pelthos, Castle Creek or any person acting on their behalf are expressly qualified in their entirety by the cautionary statements contained or referred to herein. Except as required by applicable law, Pelthos and Castle Creek undertake no obligation to revise or update any forward-looking statement, or to make any other forward-looking statements, whether as a result of new information, future events or otherwise.

NO OFFER OR SOLICITATION

This Current Report on Form 8-K is not intended to be, and shall not constitute, an offer to buy or sell or the solicitation of an offer to buy or sell any securities, or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any jurisdiction. No offering of securities shall be made, except by means of a prospectus meeting the requirements of Section 10 of the Securities Act, or an exemption therefrom.

IMPORTANT ADDITIONAL INFORMATION AND WHERE TO FIND IT

In connection with the proposed transaction, Pelthos intends to file relevant materials with the SEC, including a registration statement on Form S-4 that will include an information statement and that will also constitute a prospectus of Pelthos. Pelthos may also file other relevant documents with the SEC regarding the proposed transaction. This document is not a substitute for the information statement/prospectus, registration statement or any other document that Pelthos may file with the SEC. The definitive information statement/prospectus (when available) will be mailed to stockholders of Pelthos. INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE INFORMATION STATEMENT/PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS FILED OR THAT MAY BE FILED WITH THE SEC IN CONNECTION WITH THE PROPOSED TRANSACTION, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THOSE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT PELTHOS, CASTLE CREEK AND THE PROPOSED TRANSACTION.

Investors and stockholders will be able to obtain free copies of the information statement/prospectus and other documents filed by Pelthos with the SEC (when they become available) through the website maintained by the SEC at www.sec.gov. Copies of the information statement/prospectus (when available) and other documents filed with the SEC by Pelthos may be obtained free of charge on Pelthos's website at https://ir.pelthos.com/sec-filings/all-sec-filings or, alternatively, by contacting Pelthos at (919)-908-2400 or in writing at Pelthos, 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703. Investors and stockholders are urged to read the information statement/prospectus and the other relevant materials when they become available because they contain important information about the proposed transaction.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: October 30, 2026

Pelthos Therapeutics Inc.

By: /s/ John M. Gay
Name: John M. Gay
Title: Chief Financial Officer, Treasurer and Secretary

Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

by and among

PELTHOS THERAPEUTICS INC.,

CREDIT CARD MERGER SUB, INC.,

CREDIT CARD MERGER SUB II, LLC,

CASTLE CREEK BIOSCIENCES, INC.,

and

PARAGON BIOSCIENCES, LLC

as the Securityholder Representative

Dated as of October 30, 2026

TABLE OF CONTENTS

		Page
ARTICLE I. THE MERGERS		2
1.1	The First Merger; Initial Effective Time	2
1.2	The Second Merger; Second Effective Time	2
1.3	Closing	2
1.4	Effects of the First Merger	2
1.5	Effects of the Second Merger	3
1.6	Directors and Officers of the Surviving Corporation and the Surviving Company	3
1.7	Public Company Matters	3
1.8	Tax Treatment	4
ARTICLE II. CONVERSION OF SECURITIES		4
2.1	Conversion of Capital Stock; Treatment of Merger Partner Options, Merger Partner Warrants and Bridge Notes	4
2.2	Exchange of Certificates	7
2.3	Dissenting Shares	8
ARTICLE III. REPRESENTATIONS AND WARRANTIES OF MERGER PARTNER		9
3.1	Organization, Standing and Power	9
3.2	Capitalization	9
3.3	Subsidiaries	11
3.4	Authority; No Conflict; Required Filings and Consents	11
3.5	Financial Statements; Information Provided	13
3.6	No Undisclosed Liabilities	13
3.7	Absence of Certain Changes or Events	14
3.8	Taxes	14
3.9	Owned and Leased Real Properties	15
3.10	Intellectual Property	16
3.11	Contracts	18
3.12	Litigation	20
3.13	Environmental Matters	20
3.14	Employee Benefit Plans	20
3.15	Compliance With Laws	22
3.16	Permits and Regulatory Matters	23
3.17	Employees	24
3.18	Insurance	25
3.19	Brokers; Fees and Expenses	25
3.20	Certain Business Relationships with Affiliates	25
3.21	Controls and Procedures, Certifications and Other Matters	25
3.22	Books and Records	26
3.23	Ownership of Public Company Common Stock	26
3.24	IT; Privacy and Data Protection	26
3.25	Post-Closing Payment Obligations	27
3.26	No Other Representations or Warranties	27

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF PUBLIC COMPANY AND THE MERGER SUBS 27

4.1	Organization, Standing and Power	27
4.2	Capitalization	28
4.3	Subsidiaries	30
4.4	Authority; No Conflict; Required Filings and Consents	31
4.5	SEC Filings; Financial Statements; Information Provided	32
4.6	No Undisclosed Liabilities	33
4.7	Absence of Certain Changes or Events	33
4.8	Taxes	34
4.9	Owned and Leased Real Properties	35
4.10	Intellectual Property	36
4.11	Contracts	38
4.12	Litigation	40
4.13	Environmental Matters	40
4.14	Compliance With Laws	40
4.15	Permits and Regulatory Matters	40
4.16	Insurance	42
4.17	Employee Benefit Plans	42
4.18	Employees	44
4.19	Opinion of Financial Advisor	45
4.20	Valid Issuance	45
4.21	“Combinations with Interested Stockholders” Statutes	45
4.22	Brokers; Fees and Expenses	45
4.23	Operations of Merger Subs	45
4.24	Certain Business Relationships with Affiliates	45
4.25	Controls and Procedures, Certifications and Other Matters	46
4.26	IT; Privacy and Data Protection	46
4.27	No Shell Company Status	47
4.28	No Other Representations or Warranties	47

ARTICLE V. CONDUCT OF BUSINESS 47

5.1	Covenants of Merger Partner	47
5.2	Covenants of Public Company	50
5.3	Confidentiality	51

ARTICLE VI. ADDITIONAL AGREEMENTS 51

6.1	No Solicitation	51
6.2	NYSE American Listing	55
6.3	Access to Information	55
6.4	Public Company Stockholder Approval; Form S-4 and Information Statement; Merger Partner Stockholder Approval; Merger Partner Information Statement	55
6.5	Legal Conditions to Mergers	58
6.6	Public Disclosure	60
6.7	[Reserved]	60
6.8	D&O Indemnification	60
6.9	Notification of Certain Matters	62
6.10	Employee Matters	62

6.11	State Takeover Laws	64
6.12	Security Holder Litigation	64
6.13	Section 16 Matters	64
6.14	Delivery of Closing Merger Partner Merger Shares Allocation Schedule	65
6.15	Merger Partner Financials	65
6.16	Obligations of Merger Subs	66
6.17	Acknowledgment; Waiver of Conflicts; Retention of Privilege	66
6.18	Termination of Certain Contracts	67
6.19	Transition Services Agreement	67
ARTICLE VII. CONDITIONS TO MERGERS		68
7.1	Conditions to Each Party's Obligation to Effect the Mergers	68
7.2	Additional Conditions to the Obligations of Public Company and Merger Subs	69
7.3	Additional Conditions to the Obligations of Merger Partner	70
ARTICLE VIII. TERMINATION AND AMENDMENT		70
8.1	Termination	70
8.2	Effect of Termination	72
8.3	Fees and Expenses	72
ARTICLE IX. CONTINGENT CONSIDERATION		73
9.1	Contingent Cash Consideration	73
9.2	Contingent Share Consideration	74
9.3	PRV Request and PRV Sale Transaction	75
9.4	Disputes	77
9.5	Post-Closing Obligations and Efforts	78
9.6	Acknowledgments	79
9.7	Designation of Permitted Alternative Payee	80
9.8	Adjustments to Contingent Consideration	81
ARTICLE X. SURVIVAL AND INDEMNIFICATION		82
10.1	Survival of Representations, Warranties and Agreements	82
10.2	Indemnification by Participating Securityholders	82
10.3	Indemnification by Public Company	83
10.4	Indemnification Claims	83
10.5	Limitations	85
10.6	Exclusive Remedy	86
10.7	Determination of Losses	86
10.8	Right to Indemnification Not Affected by Knowledge	87
10.9	Deposit of Escrow Shares	87
10.10	Reduction of Escrow Shares	87
10.11	Set-Off Rights	87
10.12	Release of Escrow Shares	87
10.13	Equitable Adjustments to Escrow Shares	88
10.14	Merger Partner Merger Share Adjustment	88

ARTICLE XI. MISCELLANEOUS 88

11.1 Notices 88
11.2 Entire Agreement 89
11.3 Amendment 90
11.4 Extension; Waiver 90
11.5 Procedure for Termination, Amendment, Extension or Waiver 90
11.6 Assignment 90
11.7 Severability 90
11.8 Changes of Control; Successor Assumption Covenant 91
11.9 Counterparts and Signature 92
11.10 Interpretation 93
11.11 Governing Law 93
11.12 Remedies 94
11.13 Submission to Jurisdiction 94
11.14 WAIVER OF JURY TRIAL 94
11.15 No Third-Party Beneficiaries 94
11.16 Disclosure Schedule 94
11.17 Securityholder Representative 95
11.18 Certain Defined Terms 97

Exhibit A Form of Lock-Up Agreement – Participating Securityholders
Exhibit B Form of Merger Partner Stockholder Support Agreement
Exhibit C Form of Securities Purchase Agreement
Exhibit D Form of Surviving Corporation Certificate of Incorporation
Exhibit E Form of Amended and Restated Limited Liability Company Agreement of the Surviving Company
Exhibit F Form of Letter of Transmittal

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of October 30, 2026, is entered into by and among Pelthos Therapeutics Inc., a Nevada corporation ("Public Company"), Credit Card Merger Sub, Inc., a Delaware corporation and a wholly-owned Subsidiary of Public Company ("Merger Sub"), Credit Card Merger Sub II, LLC, a Delaware limited liability company and a wholly-owned Subsidiary of Public Company ("Merger Sub II" and, together with Merger Sub, the "Merger Subs"), Castle Creek Biosciences, Inc., a Delaware corporation ("Merger Partner"), and Paragon Biosciences, LLC, a Delaware limited liability company, as the Securityholder Representative (the "Securityholder Representative").

WHEREAS, the board of directors of Public Company (the "Public Company Board"), including all of the disinterested members thereof, and the board of directors of Merger Partner (the "Merger Partner Board") have each (i) determined that the transactions contemplated by this Agreement, including the Mergers (as defined below), are fair to, and in the best interests of, their respective corporations and stockholders, (ii) approved and declared advisable this Agreement, the Mergers and the actions contemplated by this Agreement, and (iii) determined to recommend that the stockholders of their respective corporations vote to approve such matters as are contemplated by this Agreement, including, in the case of Merger Partner, the adoption of this Agreement and, in the case of Public Company, the approval of the issuance of shares of Public Company Common Stock pursuant to this Agreement and the Concurrent Financing (as defined below), in each case pursuant to Sections 710-713 of the NYSE American LLC Company Guide (the "Share Issuances");

WHEREAS, the combination of Public Company and Merger Partner shall be effected through (i) a merger (the "First Merger") of Merger Sub with and into Merger Partner in accordance with the terms of this Agreement and the General Corporation Law of the State of Delaware (the "DGCL"), as a result of which Merger Partner will become a wholly-owned Subsidiary of Public Company, and (ii) immediately following the First Merger, a merger (the "Second Merger" and, together with the First Merger, the "Mergers") of Merger Partner, as the surviving corporation of the First Merger, with and into Merger Sub II in accordance with the terms of this Agreement, the DGCL and the Delaware Limited Liability Company Act (the "DLLCA"), as a result of which Merger Sub II will continue as the surviving company in the Second Merger and will remain a wholly-owned Subsidiary of Public Company;

WHEREAS, concurrently with the execution and delivery of this Agreement and as a condition and inducement to Public Company's willingness to enter into this Agreement, the stockholders of Merger Partner set forth on Section A of the Merger Partner Disclosure Schedule are executing support agreements in favor of Public Company, substantially in the form attached hereto as Exhibit B, pursuant to which such Persons have, subject to the terms and conditions set forth therein, agreed to vote all of their shares of Merger Partner Capital Stock in favor of the adoption of this Agreement;

WHEREAS, concurrently with the execution and delivery of this Agreement, certain investors are executing, and following the date of this Agreement, certain investors may execute, a securities purchase agreement, substantially in the form attached hereto as Exhibit C (the "Securities Purchase Agreement"), representing an aggregate commitment of not less than $57,500,000.00, pursuant to which such investors agree to purchase the number of shares of Public Company Series B Preferred Stock or Public Company Common Stock, as applicable, as set forth therein immediately prior to the Initial Effective Time (the "Concurrent Financing");

WHEREAS, concurrently with the execution and delivery of this Agreement and following the date of this Agreement, Merger Partner has issued and will issue to certain investors convertible promissory notes in an aggregate principal amount of up to $8,500,000.00, in the form agreed between Public Company and Merger Partner (the "Bridge Notes" and such issuance, the "Bridge Financing"), the principal amount of which shall, effective as of the Closing, be credited against such investors' subscription amounts under the Securities Purchase Agreement; and

WHEREAS, for U.S. federal income tax purposes, Public Company, Merger Partner and the Merger Subs intend that (i) the Mergers, taken together, qualify as a "reorganization" within the meaning of Section 368(a) of the Code and are consistent with IRS Rev. Rul. 2001-46 (the "Intended Tax Treatment") and (ii) this Agreement will constitute a "plan of reorganization" within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the Treasury Regulations.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, Public Company, Merger Sub, Merger Sub II, Merger Partner and the Securityholder Representative, intending to be legally bound hereby, agree as follows:

ARTICLE I.
THE MERGERS

1.1 The First Merger; Initial Effective Time. Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date the parties hereto will cause the First Merger to be consummated by executing and filing a certificate of merger, in a form mutually acceptable to Public Company and Merger Partner, with the Secretary of State of the State of Delaware (the "First Certificate of Merger") in accordance with the relevant provisions of the DGCL. The First Merger shall become effective upon the filing of the First Certificate of Merger with the Secretary of State of the State of Delaware or at such subsequent time or date as Public Company and Merger Partner shall agree and specify in the First Certificate of Merger (the "Initial Effective Time").

1.2 The Second Merger; Second Effective Time. Immediately following the Initial Effective Time, upon the terms and subject to the conditions set forth in this Agreement, Public Company, Merger Sub II and Merger Partner (as the Surviving Corporation) will cause the Second Merger to be consummated by executing and filing a certificate of merger, in a form mutually acceptable to Public Company and Merger Partner, with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and the DLLCA (the "Second Certificate of Merger"). The Second Merger shall become effective upon the filing of the Second Certificate of Merger with the Secretary of State of the State of Delaware, or at such subsequent time or date as Public Company and Merger Partner shall agree and specify in the Second Certificate of Merger (the "Second Effective Time").

1.3 Closing. Subject to the satisfaction or (to the extent permitted by Law) waiver of the conditions set forth in Article VII, the closing of the Mergers (the "Closing") will take place by remote exchange of electronic documents by the parties hereto at (a) 10:00 a.m., Eastern time, on a Business Day to be specified by Public Company and Merger Partner, which shall be no later than the second (2nd) Business Day after satisfaction or (to the extent permitted by Law) waiver of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or (to the extent permitted by Law) waiver of such conditions) or (b) such other time, date and place as Public Company and Merger Partner may mutually agree in writing. For the purposes of this Agreement, the term "Closing Date" means the date on which the Closing actually takes place.

1.4 Effects of the First Merger. At the Initial Effective Time, (i) Merger Sub shall be merged with and into Merger Partner (Merger Partner as the surviving corporation following the First Merger is sometimes referred to herein as the "Surviving Corporation") and the separate existence of Merger Sub shall cease and (ii) the certificate of incorporation of Merger Partner as in effect as of immediately prior to the Initial Effective Time shall be amended and restated in its entirety to read as set forth on Exhibit D, and, as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided therein and in accordance with the applicable provisions of the DGCL. In addition, the bylaws of Merger Sub, as in effect immediately prior to the Initial Effective Time, shall become the bylaws of the Surviving Corporation, except that all references to Merger Sub's name shall be automatically amended and shall become references to the Surviving Corporation's name, and such bylaws shall be the bylaws of the Surviving Corporation until thereafter amended as provided therein and in accordance with the applicable provisions of the DGCL. The First Merger shall have the effects set forth in this Agreement and the applicable provisions of the DGCL.

1.5 Effects of the Second Merger. At the Second Effective Time, (i) the Surviving Corporation shall be merged with and into Merger Sub II (Merger Sub II as the surviving company following the Second Merger is sometimes referred to herein as the "Surviving Company") and the separate existence of the Surviving Corporation shall cease, (ii) the certificate of formation of Merger Sub II as in effect immediately prior to the Second Effective Time shall become the certificate of formation of the Surviving Company until thereafter amended as provided therein and in accordance with the applicable provisions of the DLLCA, and (iii) the limited liability company agreement of Merger Sub II as in effect immediately prior to the Second Effective Time shall be amended and restated in its entirety to read as set forth on Exhibit E, and, as so amended and restated, shall become the limited liability company agreement of the Surviving Company until thereafter amended as provided therein and in accordance with the applicable provisions of the DLLCA and as provided in such limited liability company agreement; *provided* that the name of the Surviving Company shall be such name as is reasonably determined by Public Company. The Second Merger shall have the effects set forth in this Agreement and the applicable provisions of the DGCL and the DLLCA.

1.6 Directors and Officers of the Surviving Corporation and the Surviving Company.

(a) The individuals named on Section 1.6(a) of the Merger Partner Disclosure Schedule shall be and constitute all of the directors of the Surviving Corporation as of the Initial Effective Time, each to hold office until his or her respective successor has been duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

(b) The individuals named on Section 1.6(b) of the Merger Partner Disclosure Schedule (or such other executive officers of Merger Partner designated by Merger Partner prior to the Initial Effective Time) shall be and constitute all of the officers of the Surviving Corporation as of the Initial Effective Time, each to hold office until his or her respective successor has been duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

(c) From and after the Second Effective Time, Public Company shall be the sole member of the Surviving Company, and the managers and officers of Merger Sub II immediately prior to the Second Effective Time shall be the managers and officers of the Surviving Company, each to hold office until his or her respective successor has been duly appointed and qualified or until his or her earlier death, resignation or removal in accordance with the limited liability company agreement of the Surviving Company.

1.7 Public Company Matters.

(a) Board of Directors. Public Company shall take such actions as may be reasonably necessary so that, immediately after the Initial Effective Time, the number of directors that comprise the full Public Company Board shall be ten, consisting of the eight members of the Public Company Board as of the Closing and two directors designated by Merger Partner on or before the Closing Date (the "Merger Partner Designees"), each to hold office until his or her respective successor has been duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the articles of incorporation and bylaws of Public Company and applicable Nevada law. If any Merger Partner Designee is unable or unwilling to serve as a director of Public Company, Merger Partner shall designate another Merger Partner Designee.

(b) Series B Certificate of Designation. Public Company shall, immediately prior to the Concurrent Financing, file the Certificate of Designation of Series B Convertible Preferred Stock of Public Company, substantially in the form attached to the Securities Purchase Agreement (the "Series B Certificate of Designation"), with the Nevada Secretary of State, which shall provide for the authorization of a new series of convertible preferred stock of Public Company designated as Series B Convertible Preferred Stock, par value $0.0001 per share (the "Public Company Series B Preferred Stock").

1.8 Tax Treatment.

(a) The parties hereto shall treat the Mergers in accordance with the Intended Tax Treatment and shall not take any position contrary thereto (including on any Tax Return or in the conduct of any Tax audit or proceeding), except as may be required pursuant to a "determination" under Section 1313 of the Code or as a result of the Mergers no longer qualifying for the Intended Tax Treatment solely attributable to (i) the provisions of Section 9.8(e) or (ii) any recovery with respect to Fraud or Consideration Matters pursuant to the indemnity set forth in Article X. The parties hereto acknowledge and agree that neither Public Company nor Merger Partner shall be required to seek or obtain a tax opinion with respect to the qualification of the Mergers for the Intended Tax Treatment, and that neither Public Company nor Merger Partner is making any representation or warranty to the parties hereto or to any of the direct or indirect equityholders of Merger Partner or any other Person regarding whether the Mergers qualify for the Intended Tax Treatment.

(b) The parties hereto hereby adopt this Agreement as a "plan of reorganization" within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a).

ARTICLE II.
CONVERSION OF SECURITIES

2.1 Conversion of Capital Stock; Treatment of Merger Partner Options, Merger Partner Warrants and Bridge Notes.

(a) Conversion of Merger Partner Common Stock. As of the Initial Effective Time, by virtue of the First Merger and without any action on the part of the holder of any shares of Merger Partner Capital Stock, Merger Partner or Public Company, subject to Section 2.2 and Section 2.3, each share of Merger Partner Common Stock, other than shares to be cancelled in accordance with Section 2.1(c) and any Dissenting Shares, issued and outstanding immediately prior to the Initial Effective Time shall be automatically converted into the right to receive (i) a number of shares of Public Company Common Stock equal to such share's Allocable Share of the Merger Partner Merger Shares (including any Escrow Shares released pursuant to Section 10.12), and (ii) such share's Allocable Share of any Contingent Shares, Milestone Payments, PRV Interest and other payments required to be issued or paid pursuant to Article IX. As of the Initial Effective Time, all such shares of Merger Partner Common Stock shall cease to be outstanding and shall automatically be cancelled and shall cease to exist, and each holder of a certificate or non-certificated book entry representing any such shares of Merger Partner Common Stock shall cease to have any rights with respect thereto, except the right to receive the consideration set forth in this Section 2.1(a).

(b) Conversion of Merger Partner Preferred Stock. As of the Initial Effective Time, by virtue of the First Merger and without any action on the part of the holder of any shares of Merger Partner Capital Stock, Merger Partner or Public Company, subject to Section 2.2 and Section 2.3, each share of Merger Partner Preferred Stock, other than shares to be cancelled in accordance with Section 2.1(c) and any Dissenting Shares, issued and outstanding immediately prior to the Initial Effective Time shall be automatically converted into the right to receive (i) a number of shares of Public Company Common Stock equal to such share's Allocable Share of the Merger Partner Merger Shares (including any Escrow Shares released pursuant to Section 10.12), and (ii) such share's Allocable Share of any Contingent Shares, Milestone Payments, PRV Interest and other payments required to be issued or paid pursuant to Article IX. As of the Initial Effective Time, all such shares of Merger Partner Preferred Stock shall cease to be outstanding and shall automatically be cancelled and shall cease to exist, and each holder of a certificate or non-certificated book entry representing any such shares of Merger Partner Preferred Stock shall cease to have any rights with respect thereto, except the right to receive the consideration set forth in this Section 2.1(b).

(c) Cancellation of Treasury Stock. As of the Initial Effective Time, by virtue of the First Merger and without any action on the part of the holder of any shares of Merger Partner Capital Stock, Merger Partner or Public Company, all shares of Merger Partner Capital Stock that are held in treasury immediately prior to the Initial Effective Time automatically shall be cancelled and shall cease to exist without any conversion thereof and no stock of Public Company or other consideration shall be delivered in exchange therefor.

(d) Termination of Merger Partner Options. Prior to the Initial Effective Time, Merger Partner shall take such actions (including obtaining any necessary determinations or resolutions of the board of directors of Merger Partner or a committee thereof) as may be required to effectuate the termination and cancellation of the Merger Partner Equity Plan and the Merger Partner Options effective as of immediately prior to the Initial Effective Time and to ensure that from and after the Initial Effective Time, neither Public Company nor the Surviving Corporation will have any Liability with respect thereto, including any requirement to deliver shares of Merger Partner Capital Stock or any consideration into which shares of Merger Partner Capital Stock are converted pursuant to Section 2.1(a) and Section 2.1(b), in each case, to any Person pursuant to or in settlement of the Merger Partner Options. Without limiting the foregoing, prior to the Initial Effective Time, Merger Partner shall use commercially reasonable efforts to obtain from each holder of Merger Partner Options a fully effective and irrevocable option cancellation agreement including a release of claims in a form reasonably acceptable to Merger Partner (which form shall be subject to the review and consent of Public Company, not to be unreasonably withheld, conditioned, or delayed).

(e) Treatment of Merger Partner Warrants. Immediately prior to the Initial Effective Time, each Merger Partner Warrant that has not previously been exercised as to all of the Merger Partner Warrants subject thereto shall be treated in accordance with its terms. To the extent that any Merger Partner Warrants are exercised or deemed exercised on a net issuance basis in accordance with such Merger Partner Warrant Agreement, effective as of immediately prior to the Initial Effective Time, each share of Merger Partner Preferred Stock so issued shall be deemed issued and outstanding as of immediately prior to the Initial Effective Time and treated as an issued and outstanding share of Merger Partner Preferred Stock in accordance with Section 2.1(b). Each Merger Partner Warrant Agreement shall be automatically terminated in accordance with its terms immediately prior to the Initial Effective Time.

(f) Treatment of Bridge Notes. Immediately prior to the Initial Effective Time, each Bridge Note that is outstanding shall be treated in accordance with its terms, and the outstanding amount thereof shall be credited against the applicable holder's subscription amount under the Securities Purchase Agreement.

(g) Capital Stock of Merger Sub. As of the Initial Effective Time, by virtue of the First Merger and without any action on the part of the holder of any shares of Merger Partner Capital Stock or any shares of capital stock of Merger Sub, each share of the common stock, $0.001 par value per share, of Merger Sub issued and outstanding immediately prior to the Initial Effective Time shall be converted into and become one (1) fully paid and nonassessable share of common stock, $0.001 par value per share, of the Surviving Corporation, which shall constitute the only outstanding shares of capital stock of the Surviving Corporation as of immediately after the Initial Effective Time.

(h) Capitalization of Merger Sub II. As of the Second Effective Time, by virtue of the Second Merger and without any action on the part of the holder of any shares of capital stock of the Surviving Corporation or any limited liability company interests of Merger Sub II:

(i) each share of common stock of the Surviving Corporation issued and outstanding immediately prior to the Second Effective Time shall be automatically cancelled and shall cease to exist without any conversion thereof, and no consideration shall be delivered in exchange therefor; and

(ii) each limited liability company interest of Merger Sub II issued and outstanding immediately prior to the Second Effective Time shall remain outstanding and, immediately following the Second Effective Time, shall constitute the only outstanding limited liability company interests of the Surviving Company, and Public Company shall remain the sole member of the Surviving Company.

(i) Treatment of Public Company Equity Awards. As of the Closing, each Public Company Stock Option, Public Company RSU Award and Public Company PSU Award, whether vested or unvested, that is issued and outstanding immediately prior to the Closing shall continue to remain an issued and outstanding Public Company Stock Option, Public Company RSU Award or Public Company PSU Award, as applicable, and continue to be subject to the same terms and conditions as of immediately prior to the Closing, as set forth in the applicable Public Company Stock Plan and applicable award agreement.

(j) Equitable Adjustments. In the event of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to the Merger Partner Capital Stock, Public Company Common Stock or Public Company Preferred Stock occurring after the date hereof and prior to the Initial Effective Time, all references herein to specified numbers of shares of any class or series affected thereby, and all calculations provided for that are based upon numbers of shares of any class or series (or prices therefor) affected thereby, shall be equitably adjusted to the extent necessary to provide the parties the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change. Nothing in this Section 2.1(j) shall be construed to permit Merger Partner, Public Company or any Subsidiary of Public Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

2.2 Exchange of Certificates. The procedures for exchanging outstanding shares of Merger Partner Capital Stock for Public Company Common Stock pursuant to the First Merger are as follows:

(a) Exchange Agent. At the Initial Effective Time, Public Company shall deposit with Nevada Agency and Transfer Company (the "Exchange Agent"), for the benefit of the holders of shares of Merger Partner Capital Stock, for exchange in accordance with this Section 2.2, through the Exchange Agent, non-certificated book entries representing the shares of Public Company Common Stock issuable pursuant to Section 2.1 (as adjusted pursuant to Section 2.1(j), if applicable) in exchange for outstanding shares of Merger Partner Capital Stock (such shares of Public Company Common Stock being hereinafter referred to as the "Exchange Fund"). The agreement pursuant to which Public Company shall appoint the Exchange Agent (the "Exchange Agent Agreement") shall be subject to review and comment by, and in form and substance reasonably satisfactory to, Merger Partner. If following the Closing Public Company desires to replace the Exchange Agent or appoint an additional agent to perform any of the duties designated to be handled by the Exchange Agent pursuant to this Agreement, Public Company shall notify the Securityholder Representative. The agreement pursuant to which such replacement or additional agent shall be appointed to serve as Exchange Agent shall be subject to review and comment by, and in form and substance reasonably satisfactory to, the Securityholder Representative.

(b) Payment Procedures.

(i) Prior to the Initial Effective Time, Public Company shall instruct the Exchange Agent to deliver to each Participating Securityholder a letter of transmittal in the form attached hereto as Exhibit F (the "Letter of Transmittal"), pursuant to which each Participating Securityholder will make standard representations and warranties and agree to the provisions hereof, and which shall (1) include instructions for effecting the surrender of certificates evidencing shares of Merger Partner Capital Stock (each, a "Certificate"); and (2) specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent.

(ii) Upon surrender by a Participating Securityholder of a duly executed and properly completed Letter of Transmittal, the Exchange Agent shall, no later than the later of (1) the Closing Date and (2) three (3) Business Days after receipt of such Letter of Transmittal, cause such Participating Securityholder to be issued the shares of Public Company Common Stock to which such Participating Securityholder is entitled pursuant to Section 2.1 (as adjusted pursuant to Section 2.1(j), if applicable).

(iii) If any portion of the consideration pursuant to Section 2.1 is to be issued or paid to a Person other than the Person in whose name the surrendered Certificate is registered, in addition to any other condition to such payment contained in the Letter of Transmittal, it shall be a condition to such payment that (1) such Certificate shall be properly endorsed or otherwise in proper form for transfer, and (2) the Person requesting such payment shall pay to the Exchange Agent any transfer or other Taxes required as a result of such payment to a Person other than the registered holder of such Certificate or establish to the reasonable satisfaction of the Exchange Agent that such Tax has been paid or is not payable.

(c) No Fractional Shares. No certificate or scrip representing fractional shares of Public Company Common Stock shall be issued, and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a stockholder of Public Company. For purposes of this Section 2.2(c), all fractional shares to which a single Participating Securityholder would be entitled shall be aggregated and calculations shall be rounded to three decimal places. Any fractional share of Public Company Common Stock a Participating Securityholder would otherwise be entitled to receive shall be rounded up to the nearest whole share, and no cash or other consideration shall be paid for any such fractional share.

(d) No Further Ownership Rights in Merger Partner Capital Stock. All shares of Public Company Common Stock issued in accordance with the terms hereof (including any dividends or other distributions paid) shall be deemed to have been issued (and paid) in full satisfaction of all rights pertaining to such shares of Merger Partner Capital Stock, and from and after the Initial Effective Time there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation or the books and records of the Surviving Company of the shares of Merger Partner Capital Stock that were outstanding immediately prior to the Initial Effective Time.

(e) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed, and, if required by Public Company, upon the delivery by such Person of an indemnity agreement in such form as Public Company may reasonably direct (including pursuant to the Letter of Transmittal) against any claim that may be made against it with respect to such Certificate, the Exchange Agent shall deliver in exchange for such lost, stolen or destroyed Certificate the amounts issuable or payable with respect to the applicable shares of Merger Partner Capital Stock formerly represented thereby in accordance with Section 2.1.

(f) Termination of Exchange Fund. Any portion of the Exchange Fund that remains undistributed to the holders of Merger Partner Capital Stock for one (1) year after the Initial Effective Time shall be delivered to Public Company, upon demand, and any holder of Merger Partner Capital Stock immediately prior to the Initial Effective Time who has not previously complied with this Section 2.2 shall thereafter look only to Public Company, as a general unsecured creditor, for payment of its claim for Public Company Common Stock and any dividends or distributions with respect to Public Company Common Stock.

(g) No Liability. To the extent permitted by applicable Law, none of Public Company, Merger Sub, Merger Sub II, Merger Partner, the Surviving Corporation, the Surviving Company or the Exchange Agent shall be liable to any holder of shares of Merger Partner Capital Stock or Public Company Common Stock, as the case may be, for such shares or any cash amounts required to be delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(h) Withholding Rights. Each of the Exchange Agent, Public Company, the Surviving Corporation and the Surviving Company shall be entitled to deduct and withhold (or cause the Exchange Agent to deduct and withhold) from the amounts otherwise payable pursuant to, or contemplated by, this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code or any other applicable provision of Law. The applicable withholding agent shall use commercially reasonable efforts to provide prior notice to Merger Partner of its intent to deduct or withhold Taxes on payments to Participating Securityholders and shall reasonably cooperate with Merger Partner and such Participating Securityholder in obtaining any available exemption or reduction of such withholding. Any amounts deducted or withheld under this Section 2.2(h) shall be (i) timely paid over to the appropriate Governmental Entity and (ii) treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

2.3 Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, shares of Merger Partner Capital Stock outstanding immediately prior to the Initial Effective Time and held by holders who (x) are entitled to demand appraisal rights under Section 262 of the DGCL, (y) have properly exercised and perfected their respective appraisal rights in the time and manner provided in Section 262 of the DGCL and (z) as of the Initial Effective Time, have neither effectively withdrawn nor lost their rights to such appraisal and payment under the DGCL (the "Dissenting Shares"), shall not be converted into the right to receive the consideration set forth in Section 2.1(a) or 2.1(b), as applicable, but instead shall be entitled to only such payment as shall be determined pursuant to Section 262 of the DGCL; *provided*, that if any such holder shall have failed to perfect or shall have effectively withdrawn or lost such holder's right to appraisal and payment under the DGCL or if a court of competent jurisdiction shall determine that such holder is not entitled to the relief provided by Section 262 of the DGCL, then such holder's shares of Merger Partner Capital Stock shall be deemed to have been converted as of the Initial Effective Time into the right to receive the consideration set forth in Section 2.1(a) or 2.1(b), as applicable (without interest thereon and less any amounts entitled to be deducted or withheld pursuant to Section 2.2(h)), and such shares of Merger Partner Capital Stock shall no longer be Dissenting Shares. Merger Partner shall provide each applicable holder of Merger Partner Capital Stock with the notice contemplated by Section 262(d)(2) of the DGCL in accordance with Section 6.4(d). Merger Partner shall give prompt written notice to Public Company of any written demands received by Merger Partner for appraisal of any shares of Merger Partner Capital Stock, withdrawals of such demands, and any other instruments received by Merger Partner from holders of Merger Partner Capital Stock relating to rights of appraisal, and Public Company shall have the right to participate in all negotiations and proceedings with respect to such demands. Merger Partner shall not, without the prior written consent of Public Company, make any voluntary payment with respect to, or settle or offer to settle, any such demands, or agree to do any of the foregoing. Prior to the Initial Effective Time, Public Company shall not, except with the prior written consent of Merger Partner, require Merger Partner to make any payment with respect to any demands for appraisal or offer to settle or settle any such demands.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF MERGER PARTNER

Except as set forth herein or in the disclosure schedule delivered or made available by Merger Partner to Public Company and Merger Subs on the date of this Agreement (the "Merger Partner Disclosure Schedule"), Merger Partner represents and warrants to Public Company and the Merger Subs as follows:

3.1 Organization, Standing and Power. Merger Partner is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as currently conducted, and is duly qualified to do business and is in good standing (to the extent applicable in such jurisdiction), under the Laws of all jurisdictions in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary, except for such failures to be so qualified or in good standing, individually or in the aggregate, that have not had, and are not reasonably likely to have, a Merger Partner Material Adverse Effect. Merger Partner has made available to Public Company complete and accurate copies of its Organizational Documents, and copies of any amendments thereto, existing as of the date of this Agreement, and is not in material default under or in violation of any provision of any such Organizational Documents.

3.2 Capitalization.

(a) As of the date of this Agreement, the authorized capital stock of Merger Partner consists of 4,292,427 shares of Merger Partner Capital Stock. The rights and privileges of each class of Merger Partner's capital stock are as set forth in Merger Partner's certificate of incorporation. As of the date of this Agreement, (i) 2,188,700 shares of Merger Partner Common Stock are authorized, of which 8,550 shares are issued and outstanding and (ii) 2,103,727 shares of Merger Partner Preferred Stock are authorized, (A) 50,000 of which have been designated as Merger Partner Series A-1 Preferred Stock, all of which are issued and outstanding, (B) 600,000 of which have been designated as Merger Partner Series A-2 Preferred Stock, all of which are issued and outstanding, (C) 151,600 of which have been designated as Merger Partner Series A-3 Preferred Stock, all of which are issued and outstanding, (D) 145,455 of which have been designated as Merger Partner Series A-4 Preferred Stock, all of which are issued and outstanding, (E) 304 of which have been designated as Merger Partner Series A-5 Preferred Stock, all of which are issued and outstanding, (F) 160,000 of which have been designated as Merger Partner Series A-6 Preferred Stock, all of which are issued and outstanding, (G) 174,334 of which have been designated as Merger Partner Series B Preferred Stock, all of which are issued and outstanding, (H) 184,534 of which have been designated as Merger Partner Series C Preferred Stock, 134,539 of which are issued and outstanding, (I) 40,000 of which have been designated as Merger Partner Series C-1 Preferred Stock, 19,425 of which are issued and outstanding, (J) 372,500 of which have been designated as Merger Partner Series D-1 Preferred Stock, 352,736 of which are issued and outstanding, and (K) 225,000 of which have been designated as Merger Partner Series D-2 Preferred Stock, 214,708 of which are issued and outstanding, and (iii) 0 shares of Merger Partner Capital Stock are held in the treasury of Merger Partner. As of the date of this Agreement, Merger Partner has reserved 106,627 shares of Merger Partner Common Stock for issuance to employees, non-employee directors and consultants pursuant to the Merger Partner Equity Plan, of which 20,176 shares are subject to outstanding and unexercised Merger Partner Options and 86,451 shares remain available for issuance thereunder.

(b) Section 3.2(b) of the Merger Partner Disclosure Schedule sets forth, as of the date of this Agreement, a true, correct and complete list of each outstanding Merger Partner Option and value appreciation right award related to Merger Partner Common Stock granted by Merger Partner under the Merger Partner Equity Plan ("Merger Partner VAR"), including (i) the name of the holder of such award, (ii) the type of award, (iii) the number of shares of Merger Partner Common Stock subject to such award, (iv) the exercise price per share, (v) the date of grant, (vi) the expiration date, (vii) the applicable vesting schedule, including any acceleration provisions, and the number of vested and unvested shares, and (viii) whether the Merger Partner Option is intended to be an "incentive stock option" (as defined in the Code) or a non-qualified stock option. Merger Partner has made available to Public Company accurate and complete copies of the following: (A) the Merger Partner Equity Plan, (B) the standard form of agreement evidencing Merger Partner Options, and (C) each agreement evidencing a Merger Partner Option or Merger Partner VAR that does not conform in all material respects to the standard form agreement. Each Merger Partner Option has an exercise price that is no less than the fair market value of the underlying shares on the date of grant, as determined in accordance with Section 409A of the Code.

(c) Except (i) as set forth in this Section 3.2 and (ii) as set forth on Section 3.2(c) of the Merger Partner Disclosure Schedule, as of the date of this Agreement, (A) there are no equity securities of any class of Merger Partner, or any security exchangeable into or exercisable for such equity securities, issued, reserved for issuance or outstanding and (B) there are no options, warrants, equity securities, stock appreciation, phantom stock, profit participation, calls, rights, commitments or agreements of any character to which Merger Partner is a party or by which Merger Partner is bound obligating Merger Partner to issue, exchange, transfer, deliver or sell, or cause to be issued, exchanged, transferred, delivered or sold, additional shares of capital stock or other equity interests of Merger Partner or any security or rights convertible into or exchangeable or exercisable for any such shares or other equity interests, or obligating Merger Partner to grant, extend, accelerate the vesting of, otherwise modify or amend or enter into any such option, warrant, equity security, call, right, commitment or agreement. Merger Partner is not a party to or bound by any, and to the knowledge of Merger Partner, there are no, agreements or understandings with respect to the voting (including voting trusts and proxies) or sale or transfer (including agreements imposing transfer restrictions) of any shares of capital stock or other equity interests of Merger Partner. For purposes of this Agreement, the term "Affiliate" when used with respect to any party shall mean any Person who is an "affiliate" of that party within the meaning of Rule 405 promulgated under the Securities Act of 1933, as amended (the "Securities Act"). Except as contemplated by this Agreement or described in this Section 3.2(c), there are no registration rights to which Merger Partner is a party or by which it is bound with respect to any equity security of any class of Merger Partner.

(d) All outstanding shares of Merger Partner Capital Stock are duly authorized, validly issued, fully paid and nonassessable and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the DGCL, Merger Partner's Organizational Documents or any agreement to which Merger Partner is a party or is otherwise bound. There are no obligations, contingent or otherwise, of Merger Partner to repurchase, redeem or otherwise acquire any shares of Merger Partner Capital Stock. All outstanding shares of Merger Partner Capital Stock have been offered, issued and sold by Merger Partner in compliance with all applicable federal and state securities Laws.

3.3 Subsidiaries.

(a) The name of Merger Partner's sole subsidiary (the "Merger Partner Subsidiary") is set forth on Section 3.3(a) of the Merger Partner Disclosure Schedule. The Merger Partner Subsidiary is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as currently conducted, and is duly qualified to do business and is in good standing (to the extent applicable in such jurisdiction), under the Laws of all jurisdictions in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary, except for such failures to be so qualified or in good standing, individually or in the aggregate, that have not had, and are not reasonably likely to have, a Merger Partner Material Adverse Effect. All of the outstanding shares of capital stock and other equity securities or interests of the Merger Partner Subsidiary are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights and all such shares are owned, of record and beneficially, by Merger Partner or another of its Subsidiaries free and clear of all Liens, claims, pledges, agreements or limitations on Merger Partner's voting rights. There are no outstanding or authorized options, warrants, rights, agreements or commitments to which Merger Partner or the Merger Partner Subsidiary is a party or which are binding on any of them providing for the issuance, disposition or acquisition of any capital stock of the Merger Partner Subsidiary. There are no outstanding stock appreciation, phantom stock or similar rights with respect to the Merger Partner Subsidiary. There are no voting trusts, proxies or other agreements or understandings with respect to the voting of any capital stock of the Merger Partner Subsidiary.

(b) Neither Merger Partner nor the Merger Partner Subsidiary controls directly or indirectly or has any direct or indirect Equity Interests, profit sharing or similar interest of any nature in any other Person. Except as set forth on Section 3.3(b) of the Merger Partner Disclosure Schedule, Merger Partner is not and has not otherwise been, directly or indirectly, a party to, member of or participant in any partnership, joint venture or similar business entity. Merger Partner has not agreed and is not obligated to make, or is bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Person. Merger Partner has not, at any time, been a general partner of, and has not otherwise been liable for any of the debts or other obligations of, any general partnership, limited partnership or other Person.

3.4 Authority; No Conflict; Required Filings and Consents.

(a) Merger Partner has all requisite corporate power and authority to enter into this Agreement and, subject only to the adoption of this Agreement (the "Merger Partner Stockholder Approvals") by Merger Partner's stockholders under the DGCL and the certificate of incorporation of Merger Partner, to consummate the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, the Merger Partner Board, at a duly called meeting at which all directors were present, by unanimous vote or by unanimous written consent (i) determined that the First Merger is fair to, and in the best interests of, Merger Partner and its stockholders, (ii) approved this Agreement, the First Merger and the actions contemplated by this Agreement in accordance with the provisions of the DGCL, (iii) declared this Agreement advisable, and (iv) determined to recommend that the stockholders of Merger Partner vote to adopt this Agreement and thereby approve the First Merger and such other actions as contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement by Merger Partner have been duly authorized by all necessary corporate action on the part of Merger Partner, subject only to the receipt of the Merger Partner Stockholder Approvals. This Agreement has been duly executed and delivered by Merger Partner and, assuming the due execution and delivery of this Agreement by Public Company, the Merger Subs and the Securityholder Representative, constitutes the valid and binding obligation of Merger Partner, enforceable against Merger Partner in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles (the "Bankruptcy and Equity Exception").

(b) The execution and delivery of this Agreement by Merger Partner does not, and the consummation by Merger Partner of the transactions contemplated by this Agreement shall not, (i) conflict with, or result in any violation or breach of, any provision of the Organizational Documents of Merger Partner or the Merger Partner Subsidiary, (ii) conflict with, or result in any material violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, constitute a change in control under, require the payment of a penalty under or result in the imposition of any mortgage, security interest, pledge, lien, charge or encumbrance of any nature ("Liens") on Merger Partner's or the Merger Partner Subsidiary's assets (including Merger Partner Intellectual Property) under any of the terms, conditions or provisions of any Contract required to be disclosed in Section 3.11(a) of the Merger Partner Disclosure Schedule, or (iii) subject to obtaining the Merger Partner Stockholder Approvals and compliance with the requirements specified in clauses (i) through (iv) of Section 3.4(c), conflict with or violate any permit, concession, franchise, license, judgment, injunction, order, decree, statute, Law, ordinance, rule or regulation applicable to Merger Partner or the Merger Partner Subsidiary or any of their respective properties or assets, except in the case of clauses (ii) and (iii) of this Section 3.4(b), as would not, individually or in the aggregate, reasonably be expected to result in a Merger Partner Material Adverse Effect.

(c) No consent, approval, license, permit, order or authorization of, or registration, declaration, notice or filing with, any court, arbitrational tribunal, administrative agency or commission or other governmental or regulatory authority, agency or instrumentality (a "Governmental Entity") is required by or with respect to Merger Partner or the Merger Partner Subsidiary in connection with the execution and delivery of this Agreement by Merger Partner or the consummation by Merger Partner of the transactions contemplated by this Agreement, except for (i) the filing of the First Certificate of Merger and the Second Certificate of Merger with the Delaware Secretary of State and appropriate corresponding documents with the appropriate authorities of other states in which Merger Partner is qualified as a foreign corporation to transact business, (ii) the filing of the Form S-4 with the U.S. Securities and Exchange Commission (the "SEC") in accordance with the Securities Act, (iii) the filing of the Information Statement with the SEC in accordance with the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (iv) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable state securities Laws and the Laws of any foreign country, and (v) such other consents, declarations, authorizations, orders, filings, approvals and registrations that, individually or in the aggregate, if not obtained or made, would not be reasonably expected to result in a Merger Partner Material Adverse Effect.

(d) The affirmative vote in favor of the adoption of this Agreement and approval of the First Merger by the holders of at least a majority of the outstanding shares of Merger Partner Capital Stock on an as-converted to common stock basis (the "Requisite Merger Partner Stockholder Approval"), is the only vote of the holders of any class or series of Merger Partner's capital stock or other securities necessary for the adoption of this Agreement by Merger Partner and for the consummation by Merger Partner of the other transactions contemplated by this Agreement. There are no bonds, debentures, notes or other indebtedness of Merger Partner having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of Merger Partner may vote.

3.5 Financial Statements; Information Provided.

(a) Merger Partner has made available to Public Company correct and complete copies of the Financial Statements. The Financial Statements (i) were prepared in accordance with United States generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods covered thereby (except as may be indicated in the notes to such Financial Statements) and (ii) fairly present in all material respects the consolidated financial position of Merger Partner and the Merger Partner Subsidiary as of the dates thereof, except that the unaudited interim Financial Statements are subject to normal year-end adjustments that are not expected to be material in amount. For purposes of this Agreement, "Financial Statements" means (A) the audited consolidated balance sheet as of December 31, 2025 and the related audited consolidated statements of income, changes in stockholders' equity and cash flows of Merger Partner and the Merger Partner Subsidiary for the year then ended, together with all related notes and schedules thereto, and (B) the unaudited consolidated balance sheet as of September 30, 2026 (the "Most Recent Balance Sheet" and such date, the "Most Recent Balance Sheet Date"), and the related unaudited consolidated statements of income, changes in stockholders' equity and cash flows of Merger Partner for the period then ended, together with all related notes and schedules thereto. The books of account and other financial records of Merger Partner and the Merger Partner Subsidiary are true and complete in all material respects.

(b) The information to be supplied by or on behalf of Merger Partner for inclusion or incorporation by reference in the Information Statement, shall not, on the date the Information Statement and any amendments or supplements thereto are first filed with the SEC and at the time it is first mailed to stockholders of Public Company, or at any time thereafter up to and including the Initial Effective Time, contain any untrue statement that, at such time and in light of the circumstances under which it shall be made, is false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements made in the Information Statement not false or misleading; or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the Requisite Public Company Stockholder Approvals that has become false or misleading.

(c) Section 3.5(c) of the Merger Partner Disclosure Schedule sets forth all Indebtedness of Merger Partner and its Subsidiaries as of the date hereof, and except as set forth in Section 3.5(c) of the Merger Partner Disclosure Schedule, the execution and delivery of this Agreement by Merger Partner and the consummation by Merger Partner of the transactions contemplated by this Agreement will not result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, constitute a change in control under, or otherwise accelerate amounts payable or increase the amounts outstanding in respect of such Indebtedness.

3.6 No Undisclosed Liabilities. Neither Merger Partner nor the Merger Partner Subsidiary has any material Liability, except for (i) Liabilities shown on the Most Recent Balance Sheet, (ii) Liabilities of a type required to be shown on the Most Recent Balance Sheet that have arisen since the Most Recent Balance Sheet Date in the Ordinary Course of Business (and which have not resulted from a breach of contract, breach of warranty, tort, infringement or violation of Law), (iii) Liabilities for Transaction Expenses incurred in connection with the transactions contemplated by this Agreement, or (iv) Liabilities which would not have a Merger Partner Material Adverse Effect.

3.7 Absence of Certain Changes or Events. During the period beginning on the Most Recent Balance Sheet Date and ending on the date hereof, each of Merger Partner and the Merger Partner Subsidiary has conducted its business only in the Ordinary Course of Business and, since such date, except as otherwise set forth on Section 3.7 of the Merger Partner Disclosure Schedule, there has not been (a) any change, event, circumstance, development or effect that, individually or in the aggregate, has had, or is reasonably expected to have, a Merger Partner Material Adverse Effect, or (b) any other action or event that would have required the consent of Public Company pursuant to Section 5.1 had such action or event occurred after the date of this Agreement.

3.8 Taxes.

(a) All material Tax Returns required to be filed by or with respect to Merger Partner or the Merger Partner Subsidiary have been properly and timely filed, and all such Tax Returns are true, correct and complete in all material respects. All material Taxes due and payable by Merger Partner or the Merger Partner Subsidiary (whether or not shown on any Tax Return) have been timely paid.

(b) Neither Merger Partner nor the Merger Partner Subsidiary is, nor has it ever been, a member of an affiliated group with which it has filed (or been required to file) consolidated, combined, unitary or similar U.S. federal Tax Returns, other than a group of which the common parent is Merger Partner. Neither Merger Partner nor the Merger Partner Subsidiary is party to any Tax indemnity, Tax sharing, Tax allocation or similar agreement, other than customary commercial Contracts not primarily related to Taxes. Neither Merger Partner nor the Merger Partner Subsidiary has any material Liability for Taxes of another Person (other than Merger Partner or the Merger Partner Subsidiary) under Treasury Regulations Section 1.1502-6 (or any comparable or similar provision of state, local or non-U.S. Law), as a transferee or successor, or otherwise by operation of Law.

(c) All material Taxes that Merger Partner and the Merger Partner Subsidiary were required by Law to withhold or collect have been duly withheld or collected and, to the extent required, have been properly paid to the appropriate Governmental Entity.

(d) No examination or audit of any Tax Return of Merger Partner or the Merger Partner Subsidiary by any Governmental Entity is currently in progress or, to the knowledge of Merger Partner, has been threatened by any Governmental Entity. No deficiencies for material Taxes of Merger Partner or any Merger Partner Subsidiary have been claimed, proposed or assessed by any Governmental Entity in writing that remain unresolved. No Governmental Entity in a jurisdiction in which Merger Partner or the Merger Partner Subsidiary does not file a particular type of Tax Return or pay a particular type of Tax has made a written claim that Merger Partner or the Merger Partner Subsidiary is or may be required to file such Tax Returns or is or may be required to be subject to such Tax in such jurisdiction, which claim remains unresolved. Neither Merger Partner nor the Merger Partner Subsidiary has (i) waived any statute of limitations with respect to material Taxes or agreed to extend the period for assessment or collection of any material Taxes (other than any automatic extension granted in the Ordinary Course of Business and consistent with past custom and practice of Merger Partner or the Merger Partner Subsidiary), which waiver or extension is still in effect, or (ii) requested any extension of time within which to file any material Tax Return (other than any extension granted in the Ordinary Course of Business and consistent with past custom and practice of Merger Partner or the Merger Partner Subsidiary).

(e) Neither Merger Partner nor the Merger Partner Subsidiary has made any payment or provided any benefit that has resulted in, and neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in conjunction with additional or subsequent events, including any termination of employment or service), will result in, any payment or provide any benefit that may be treated as an "excess parachute payment" under Section 280G of the Code (without regard to Sections 280G(b)(4) and 280G(b)(5) of the Code).

(f) Merger Partner is not, and has not been during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code.

(g) Merger Partner has not distributed to its stockholders or security holders stock or securities of a controlled corporation, nor has stock or securities of Merger Partner been distributed, in a transaction to which Section 355 of the Code applies in the prior two (2) years.

(h) There are no Liens with respect to Taxes upon any of the assets or properties of Merger Partner or the Merger Partner Subsidiary, other than Permitted Liens.

(i) Neither Merger Partner nor the Merger Partner Subsidiary will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of any (i) adjustments under Section 481 of the Code (or any similar adjustments under any provision of corresponding U.S. state, local, or non-U.S. Law) or use of an improper method of accounting, in each case, for a taxable period (or portion thereof) ending on or prior to the Closing Date, (ii) installment sale or other open transaction disposition made prior to the Closing Date outside the Ordinary Course of Business, (iii) closing agreement within the meaning of Section 7121 of the Code (or any similar or analogous agreement entered into under corresponding U.S. state, local, or non-U.S. Law) or (iv) prepaid amount or deferred revenue received prior to the Closing Date outside the Ordinary Course of Business.

(j) Neither Merger Partner nor the Merger Partner Subsidiary has participated in any "listed transaction" as defined in Treasury Regulations Section 1.6011-4(b)(2).

(k) Neither Merger Partner nor the Merger Partner Subsidiary is a party to any joint venture, partnership, or other arrangement that is classified as a partnership for U.S. federal income Tax purposes. Merger Partner is and has since the date of its formation been classified as an association taxable as a corporation for U.S. federal income Tax purposes. Section 3.8(k) of the Merger Partner Disclosure Schedule sets forth the Tax classification of the Merger Partner Subsidiary.

(l) None of the Merger Partner Capital Stock is subject to a "substantial risk of forfeiture" within the meaning of Section 83 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law). Each Person who was issued stock in Merger Partner in connection with the performance of services that was subject to a "substantial risk of forfeiture" within the meaning of Section 83 of the Code made a timely election with respect to such stock pursuant to Section 83(b) of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law).

(m) Neither Merger Partner nor the Merger Partner Subsidiary is subject to income Tax in any country other than its country of incorporation, organization or formation by virtue of having employees, a permanent establishment or other fixed place of business in that country.

3.9 Owned and Leased Real Properties.

(a) Neither Merger Partner nor the Merger Partner Subsidiary owns nor has it ever owned any real property.

(b) Section 3.9(b) of the Merger Partner Disclosure Schedule sets forth a complete and accurate list of all real property leased, subleased or licensed by Merger Partner or the Merger Partner Subsidiary as of the date of this Agreement (collectively, the "Merger Partner Leases") and the location of the premises of such real property. Neither Merger Partner, the Merger Partner Subsidiary nor, to the knowledge of Merger Partner, any other party is in breach or default and no event has occurred, is pending or, to the knowledge of Merger Partner, is threatened, which, after the giving of notice, with lapse of time, or otherwise, would constitute any such breach or default under any of the Merger Partner Leases, except where the existence of such breaches or defaults, individually or in the aggregate, has not had, and is not reasonably likely to result in, a Merger Partner Material Adverse Effect. Merger Partner does not lease, sublease or license any real property to any Person other than Merger Partner. Merger Partner has made available to Public Company complete and accurate copies of all Merger Partner Leases.

3.10 Intellectual Property.

(a) Section 3.10(a) of the Merger Partner Disclosure Schedule sets forth a complete and accurate list of all Merger Partner Registrations, in each case enumerating specifically the applicable filing or registration number, title, jurisdiction in which filing was made or from which registration issued, date of filing or issuance, and names of all current applicant(s) and registered owner(s), as applicable, except that, for any Merger Partner Registrations that are Internet domain names or social media accounts and identifiers, such enumeration shall be the applicable account name or number, the domain registrar or social media company and the registered owner(s). All assignments of Merger Partner Registrations to Merger Partner or the Merger Partner Subsidiary have been properly executed and recorded, and all issuance, renewal, maintenance and other payments that are or have become due with respect thereto have been timely paid by or on behalf of Merger Partner or the Merger Partner Subsidiary. To the knowledge of Merger Partner, all Merger Partner Registrations are valid and enforceable.

(b) There are no inventorship challenges, *inter partes* proceedings, opposition or nullity proceedings or interferences declared, commenced or provoked, or, to the knowledge of Merger Partner, threatened, with respect to any Patent Rights included in the Merger Partner Registrations. None of the Patent Rights included in the Merger Partner Registrations have been abandoned. Merger Partner and the Merger Partner Subsidiary have materially complied with their respective duties of candor and disclosure to the United States Patent and Trademark Office and any relevant foreign patent office with respect to all patent and Trademark applications filed by or on behalf of Merger Partner and have made no material misrepresentation in such applications. Merger Partner has no knowledge of any information that would preclude Merger Partner or the Merger Partner Subsidiary from having clear title to the Merger Partner Registrations included in the Merger Partner Owned Intellectual Property.

(c) Merger Partner or the Merger Partner Subsidiary, as applicable, is the sole and exclusive owner of all Merger Partner Owned Intellectual Property, free and clear of any Liens, other than any joint owners of the Merger Partner Owned Intellectual Property that are listed in Section 3.10(c) of the Merger Partner Disclosure Schedule, and Merger Partner and the Merger Partner Subsidiary have the valid and sufficient right to use all other Intellectual Property used in or reasonably necessary for the operation of their respective businesses as currently conducted and proposed to be conducted. None of the Merger Partner Intellectual Property is subject to any orders, decrees or injunctions.

(d) To the knowledge of Merger Partner, the Patent Rights included in the Merger Partner Owned Intellectual Property contain one or more claims that cover the composition of matter, method of use or method of manufacture of each Company Product.

(e) Merger Partner or the Merger Partner Subsidiary, as applicable, has taken reasonable measures to protect the proprietary nature of each item of Merger Partner Owned Intellectual Property, and to maintain in confidence all trade secrets and confidential information comprising a part thereof. To Merger Partner's knowledge, there has been no unauthorized disclosure of any trade secrets or confidential information (including any third party proprietary or confidential information) in the possession, custody or control of Merger Partner or the Merger Partner Subsidiary.

(f) To the knowledge of Merger Partner, the operations of Merger Partner and the Merger Partner Subsidiary as currently conducted do not infringe, misappropriate or otherwise violate and have not during the three (3) years prior to the date hereof infringed, misappropriated or otherwise violated the Intellectual Property of any individual or entity. To Merger Partner's knowledge, no individual or entity has infringed, misappropriated or otherwise violated the Merger Partner Owned Intellectual Property or any rights under the Merger Partner Intellectual Property that are exclusively licensed to Merger Partner or the Merger Partner Subsidiary, and neither Merger Partner nor the Merger Partner Subsidiary has filed or threatened in writing any claims alleging that a third party or Worker has infringed, misappropriated or otherwise violated any Merger Partner Intellectual Property. No individual or entity has filed or, to the knowledge of Merger Partner, threatened any claims alleging that Merger Partner or the Merger Partner Subsidiary has infringed, misappropriated or otherwise violated any individual's or entity's Intellectual Property nor has Merger Partner or the Merger Partner Subsidiary received any written notification that a license under any other individual's or entity's Intellectual Property is or may be required.

(g) Merger Partner has made available to Public Company copies of all material written complaints, claims, notices or threats, and disclosed to Public Company all material non-written complaints, claims, notices or threats, in each case, concerning the infringement, violation or other misappropriation of any Merger Partner Intellectual Property.

(h) Section 3.10(h) of the Merger Partner Disclosure Schedule identifies (i) each Contract pursuant to which Merger Partner or the Merger Partner Subsidiary has granted rights to any Merger Partner Licensed Intellectual Property, and (ii) each Contract pursuant to which Merger Partner or the Merger Partner Subsidiary has granted any joint ownership interest or contingent right in or to any item of Merger Partner Owned Intellectual Property, in each case of clauses (i) and (ii), other than Excluded Contracts.

(i) Section 3.10(i) of the Merger Partner Disclosure Schedule identifies (i) each Contract pursuant to which Merger Partner or the Merger Partner Subsidiary has obtained any rights to any Merger Partner Licensed Intellectual Property and (ii) each Contract pursuant to which Merger Partner or the Merger Partner Subsidiary has obtained any joint or sole ownership interest or contingent right in or to any item of Merger Partner Owned Intellectual Property, in each case of clauses (i) and (ii), other than Excluded Contracts.

(j) To the knowledge of Merger Partner, no past or present Worker of Merger Partner or the Merger Partner Subsidiary is in material default under or breach of any term of any employment Contract, non-disclosure Contract, assignment of invention Contract or similar Contract between such Worker and Merger Partner or the Merger Partner Subsidiary, as applicable, relating to the protection, ownership, development, use, assignment or transfer of Merger Partner Intellectual Property. To the extent that any Merger Partner Owned Intellectual Property has been conceived, reduced to practice, authored, developed or created for Merger Partner or the Merger Partner Subsidiary by any individual while a Worker, Merger Partner or the Merger Partner Subsidiary, as applicable, has obtained the entire and unencumbered right, title and interest therein and thereto by operation of Law or by valid written assignment.

(k) The execution and delivery of this Agreement by Merger Partner does not, and the consummation by Merger Partner of the transactions contemplated by this Agreement shall not, result in (i) a material breach of or default under any agreement governing any Merger Partner Intellectual Property, (ii) the grant or transfer to any third party of any new license or other interest under, the abandonment, assignment to any third party, or modification or loss of any right with respect to, any Merger Partner Intellectual Property in any material respect, (iii) the grant or transfer to any third party of any license or other interest under, or any covenant not to sue in respect of, any Public Company Intellectual Property, or (iv) Merger Partner, the Merger Partner Subsidiary, Public Company or any of their respective Affiliates being obligated to pay any penalty or new or increased royalty or fee to any individual or entity under any agreement governing any Merger Partner Intellectual Property.

(l) No funds, facilities, Intellectual Property, personnel or other resources of any Governmental Entity or any university, college, research institute or other educational institution are being used, or have been used at any time, to create, reduce to practice, or develop Merger Partner Owned Intellectual Property (or, to the knowledge of Merger Partner, any Merger Partner Licensed Intellectual Property), except for any such use that does not result in such Governmental Entity or institution obtaining any ownership rights to such Merger Partner Intellectual Property or the right to receive royalties or other payments for the practice of such Merger Partner Intellectual Property, including "march in" or co-ownership rights in any Merger Partner Intellectual Property or any claim, option or other right to any of the foregoing.

(m) (i) Neither Merger Partner nor the Merger Partner Subsidiary has incorporated, embedded, linked, or otherwise used any software or other material that is licensed under any "open source," "free software," "copyleft," or similar license (including the GNU General Public License, the GNU Lesser General Public License, the Mozilla Public License, the Common Development and Distribution License, the Eclipse Public License, or any Creative Commons "ShareAlike" license) (collectively, "Open Source Materials") into, or in connection with, any product or service of Merger Partner or the Merger Partner Subsidiary in a manner that (A) requires or conditions the use or distribution of such product or service on the disclosure, licensing, or distribution of any source code of any Merger Partner Owned Intellectual Property, (B) requires or conditions the use or distribution of such product or service on the granting to any third party of any rights or immunities under any Merger Partner Owned Intellectual Property (including any Patent Rights), (C) imposes any restriction on the consideration to be charged for the distribution or licensing of any Merger Partner Owned Intellectual Property, product, or service, or (D) creates, or purports to create, any obligations for Merger Partner or the Merger Partner Subsidiary with respect to any Merger Partner Owned Intellectual Property, or grants, or purports to grant, to any third party any rights or immunities under any Merger Partner Owned Intellectual Property; and (ii) Merger Partner and the Merger Partner Subsidiary have complied in all material respects with all applicable terms and conditions of all licenses for Open Source Materials used by or on behalf of Merger Partner or the Merger Partner Subsidiary.

(n) The conduct of the Merger Partner's and its Affiliates' respective businesses, as currently conducted or as proposed to be conducted (including with respect to the Exploitation of any Covered Product), has not resulted in, and will not result in, any obligation to pay royalties, milestone payments, license fees or any other amounts under any Contract set forth on Section 3.10(n) of the Merger Partner Disclosure Schedule.

3.11 Contracts.

(a) Section 3.11(a) of the Merger Partner Disclosure Schedule lists the following Contracts of Merger Partner in effect as of the date of this Agreement (in each case, excluding Excluded Contracts):

(i) any Contract (or group of related Contracts) for the purchase or sale of products or for the furnishing or receipt of services (A) which expressly requires future payments by or to Merger Partner of more than $50,000.00 annually, or (B) in which Merger Partner has granted manufacturing rights, "most favored nation" pricing provisions or marketing or distribution rights relating to any products or territory, or has agreed to purchase goods or services exclusively from a particular party or has granted a right of first offer, right of first refusal, or right of first negotiation in favor of any third party;

(ii) any Contract under which Merger Partner is prohibited from selling, licensing or otherwise distributing any of its technology or products, or providing services to, customers or potential customers or any class of customers, in any geographic area, during any period of time or any segment of the market or line of business;

(iii) any (A) employment Contract with a Merger Partner Key Employee and (B) individual independent contractor or consulting Contract that involves or could involve payments in excess of $100,000.00 within any twelve (12) month period or is with an individual independent contractor who has material access to confidential or proprietary information of Merger Partner or the Merger Partner Subsidiary;

(iv) any Contract, plan, policy or program providing for retention or stay pay, change in control payments or transaction-based bonuses;

(v) any Contract relating to any agreement of indemnification or guaranty not entered into in the Ordinary Course of Business;

(vi) any Contract relating to the disposition or acquisition of material assets or any ownership interest in Merger Partner or any of its Subsidiaries, in each case, involving payments in excess of $50,000.00 in the aggregate;

(vii) any settlement Contract or settlement-related Contract (including any Contract in connection with which any employment-related claim is settled) under which either side has remaining financial obligations;

(viii) any dealer, distribution, joint marketing, joint venture, joint development, partnership, strategic alliance, collaboration, development agreement or outsourcing arrangement;

(ix) any Contract for the conduct of research studies, pre-clinical or clinical studies, manufacturing, distribution, supply, marketing or co-promotion of any products in development by, or which has been or which is being marketed, distributed, supported, sold or licensed out, in each case, by or on behalf of Merger Partner or the Merger Partner Subsidiary;

(x) except with respect to Indebtedness between or among Merger Partner and its Subsidiaries, any Contract relating to (A) Indebtedness or (B) any financial guaranty;

(xi) any Contract or commitment with any Person, including any financial advisor, broker, finder, investment banker, attorney or other Person, providing advisory services or other services for Merger Partner or the Merger Partner Subsidiary in connection with the transactions contemplated by this Agreement; and

(xii) any Contract that involved or would reasonably be expected to result in (A) the grant or transfer to any third party of any new license or other interest under, the abandonment, assignment to any third party, or modification or loss of any right with respect to, or the creation of any Lien (excluding a Permitted Lien) on any Merger Partner Intellectual Property, (B) the grant or transfer to any third party of any license or other interest under, or any covenant not to sue with respect to, any Merger Partner Intellectual Property, or (C) Merger Partner, Public Company or any of their respective Affiliates being obligated to pay any penalty or new or increased royalty or fee to any individual or entity under any agreement governing any Merger Partner Intellectual Property.

(b) Merger Partner has made available to Public Company a complete and accurate copy of each Contract listed in Sections 3.10(a), 3.10(h), 3.10(i), and 3.11(a) of the Merger Partner Disclosure Schedule. With respect to each Contract so listed or that should be listed: (i) the Contract is legal, valid, binding and enforceable and in full force and effect against Merger Partner, as applicable, and, to the knowledge of Merger Partner, against each other party thereto, as applicable, subject to the Bankruptcy and Equity Exception; and (ii) neither Merger Partner, nor, to the knowledge of Merger Partner, any other party, is in material breach or violation of, or default under, any such Contract, and no event has occurred, is pending or, to the knowledge of Merger Partner, is threatened, which, with or without notice or lapse of time, or both, would constitute a material breach or default by Merger Partner or, to the knowledge of Merger Partner, any other party under such Contract, except for such breaches, violations or defaults that, individually or in the aggregate, have not had, and are not reasonably likely to have, a Merger Partner Material Adverse Effect.

3.12 Litigation. Except as otherwise set forth on Section 3.12 of the Merger Partner Disclosure Schedule, as of the date of this Agreement, there is no action, suit, proceeding, claim, arbitration or investigation before any Governmental Entity or before any arbitrator that is pending or has been threatened in writing against Merger Partner or the Merger Partner Subsidiary that (i) seeks either damages in excess of $50,000.00 or equitable relief or (ii) in any manner challenges or seeks to prevent, enjoin, alter or delay the transactions contemplated by this Agreement. There are no material judgments, orders or decrees outstanding against Merger Partner or the Merger Partner Subsidiary.

3.13 Environmental Matters.

(a) Except for such matters that, individually or in the aggregate, have not had, and are not reasonably likely to have, a Merger Partner Material Adverse Effect: (i) Merger Partner and the Merger Partner Subsidiary have complied in all material respects with all applicable Environmental Laws; (ii) the properties currently or, to the knowledge of Merger Partner, formerly owned, leased or operated by Merger Partner and the Merger Partner Subsidiary (including soils, groundwater, surface water, buildings or other structures) are and were not contaminated with any Hazardous Substances in a manner or amounts that would be reasonably likely to create a material Liability under any Environmental Law or relating to Hazardous Substances; (iii) neither Merger Partner nor the Merger Partner Subsidiary has received written notice from any party alleging actual or potential material Liability for any Hazardous Substance disposal or contamination on the property of any third party; and (iv) neither Merger Partner nor the Merger Partner Subsidiary has released any Hazardous Substance into the environment in a manner or amounts that would be reasonably likely to create a material Liability under any Environmental Law or relating to Hazardous Substances.

(b) As of the date of this Agreement, neither Merger Partner nor the Merger Partner Subsidiary has received any written notice, demand, letter, claim or request for information alleging that Merger Partner or any of its Subsidiaries may be in material violation of or have material Liability or obligations under, any Environmental Law.

(c) Neither Merger Partner nor the Merger Partner Subsidiary is subject to any orders, decrees, injunctions or other arrangements with any Governmental Entity or is subject to any indemnity or other agreement with any third party relating to any material Liability under any Environmental Law or relating to Hazardous Substances.

3.14 Employee Benefit Plans.

(a) Section 3.14(a) of the Merger Partner Disclosure Schedule contains a true and complete list of all material Merger Partner Employee Plans. As applicable with respect to each Merger Partner Employee Plan, Merger Partner has made available to Public Company true and complete copies of (i) the plan document, including all amendments thereto, and in the case of an unwritten Employee Benefit Plan, a written description of all material terms thereof, (ii) all related trust instruments or other funding-related documents and insurance contracts, (iii) the summary plan description and each summary of material modifications thereto, (iv) the financial statements for the three (3) most recent years for which such financial statements are available (in audited form, if available or required by ERISA) and, where applicable, annual reports with any Governmental Entity (e.g., Form 5500 and all schedules thereto), (v) the most recent IRS determination or opinion letter, (vi) written results of any required compliance testing for the three (3) most recent plan years and (vii) all material, non-routine notices, filings or correspondence during the past three (3) years with any Governmental Entity.

(b) Each Merger Partner Employee Plan is and has been established and administered in all material respects in compliance with ERISA, the Code, the Patient Protection and Affordable Care Act, including the Health Care and Education Reconciliation Act of 2010, as amended and including any guidance issued thereunder ("ACA"), and all other applicable Laws and the regulations thereunder and in accordance with its terms, and each of Merger Partner and its Subsidiaries has in all material respects met its obligations with respect to such Merger Partner Employee Plan. All required contributions to, and premiums payable in respect of, each Merger Partner Employee Plan have been timely made within the time periods, if any, prescribed by ERISA, the Code or other applicable Law or, to the extent not required to be made on or before the date of this Agreement, have been properly accrued on Merger Partner's financial statements in accordance with GAAP. There is and has in the past three (3) years been no audit, investigation or other proceeding (including any voluntary correction application) pending against or involving any Merger Partner Employee Plan, and to the knowledge of Merger Partner, no such audit, investigation or other proceeding is or has in the past three (3) years been threatened.

(c) With respect to the Merger Partner Employee Plans, there are no material benefit obligations for which contributions have not been made or properly accrued and there are no material benefit obligations that have not been accounted for by reserves, or otherwise properly footnoted in accordance with GAAP, on the financial statements of Merger Partner or the Merger Partner Subsidiary.

(d) All Merger Partner Employee Plans that are intended to be qualified under Section 401(a) of the Code have received determination or opinion letters from the IRS to the effect that such Merger Partner Employee Plans are qualified and the plans and trusts related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, no such determination or opinion letter has been revoked and, to the knowledge of Merger Partner, no revocation has been threatened and no event has occurred that would reasonably be expected to adversely affect the qualified status of any such Merger Partner Employee Plan.

(e) Neither Merger Partner nor any of its Subsidiaries nor any of their respective ERISA Affiliates has (i) ever maintained, contributed to, or had any Liability with respect to an Employee Benefit Plan that is or was a defined benefit pension plan as defined in Sections 3(2) and 3(35) of ERISA or was ever subject to Section 412 or 430 of the Code or Title IV of ERISA or (ii) ever been obligated to contribute to a "multiemployer plan" (as defined in Section 3(37) or 4001(a)(3) of ERISA). No Merger Partner Employee Plan that is intended to be qualified under Section 401(a) of the Code is funded by, associated with or related to a "voluntary employees' beneficiary association" within the meaning of Section 501(c)(9) of the Code. No Merger Partner Employee Plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA.

(f) No Merger Partner Employee Plan provides, and neither Merger Partner nor any of its ERISA Affiliates has any obligation to provide, any post-termination health, disability or life insurance benefits to any individual, except as required by (i) COBRA or similar state Law or (ii) contractually required subsidies for COBRA coverage during a severance period under an agreement listed on Section 3.14(a) of the Merger Partner Disclosure Schedule.

(g) Each Merger Partner Employee Plan that is a group health plan under Section 733(a)(1) of ERISA has satisfied, in all material respects, all obligations under COBRA and each applicable state Law relating to continuation of health coverage for participants and beneficiaries with respect to any qualifying event that has occurred on or before the Closing Date. Neither Merger Partner nor any of the Merger Partner Employee Plans has incurred (whether or not assessed), or is reasonably expected to incur or to be subject to, any Tax, penalty, assessment, or other Liability that may be imposed under the ACA or Sections 4980B, 4980D, 4980H, 6721 or 6722 of the Code or with respect to any requirement to timely file ACA information returns with the IRS or provide statements to participants under Section 6056 or 6055 of the Code or state requirements as applicable, or pursuant to Sections 4976 through 4980 of the Code or Title I of ERISA with respect to any of the Merger Partner Employee Plans. No IRS Letter 226J, 5699, 5698, or IRS Notice 972CG has been issued to or with respect to Merger Partner or any Merger Partner Employee Plan.

(h) Except as contemplated by this Agreement or as set forth on Section 3.14(h) of the Merger Partner Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in conjunction with additional or subsequent events, including any termination of employment or service), will (i) result in any payment (including any severance or bonus payment) becoming due to any current or former employee or other individual service provider of Merger Partner or the Merger Partner Subsidiary, (ii) result in any forgiveness of indebtedness to any current or former employee or other individual service provider of Merger Partner or the Merger Partner Subsidiary, (iii) increase, or result in an acceleration of the time of payment or vesting of, the compensation or benefits otherwise due to any current or former employee or other individual service provider of Merger Partner or the Merger Partner Subsidiary, (iv) trigger any payment or funding of any compensation or benefits under any Merger Partner Employee Plan, or (v) result in any restriction on the right of Merger Partner, Public Company or any of their respective Subsidiaries to merge, amend, terminate or transfer any Merger Partner Employee Plan.

(i) No Merger Partner Employee Plan provides, and neither Merger Partner nor any of its ERISA Affiliates has any obligation to provide, any gross-up, indemnification or reimbursement of any Taxes, including, without limitation, Taxes incurred under Section 4999 or 409A of the Code.

(j) Each Merger Partner Employee Plan that is a "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code) complies and has complied, in all material respects, in form and operation with Section 409A of the Code and all IRS regulations and other guidance thereunder. No event has occurred that would be treated by Section 409A(b) of the Code as a transfer of property for purposes of Section 83 of the Code.

(k) No Merger Partner Employee Plan is subject to any Law of a foreign jurisdiction outside of the United States.

3.15 Compliance With Laws. Except as would not reasonably be expected to result in a Merger Partner Material Adverse Effect, Merger Partner and the Merger Partner Subsidiary have during the three (3) years prior to the date hereof complied with, are not in violation of, and, as of the date of this Agreement, have not received any written notice from any Governmental Entity alleging any violation with respect to, any applicable provisions of any Law related to the conduct of their respective business or the ownership or operation of their respective properties or assets.

3.16 Permits and Regulatory Matters. Except as would not reasonably be expected to result in a Merger Partner Material Adverse Effect:

(a) Merger Partner and the Merger Partner Subsidiary have all required permits, licenses, registrations, authorizations, certificates, orders, approvals, franchises, variances and other similar rights issued by or obtained from any Governmental Entity (collectively, "Permits") necessary to conduct their respective businesses as currently conducted, including all such Permits required by the U.S. Food and Drug Administration (the "FDA"), such as authorization of an Investigational New Drug application ("IND"), or by any other federal, state or foreign agencies or bodies engaged in the regulation of pharmaceutical or biological products (together with the FDA, the "Regulating Authorities"). Section 3.16(a) of the Merger Partner Disclosure Schedule lists all material Permits, including such Permits relating to environmental matters.

(b) All Permits that are necessary for the conduct of the business of Merger Partner and the Merger Partner Subsidiary as currently conducted ("Merger Partner Authorizations") are in full force and effect. No Merger Partner Authorization shall cease to be effective as a result of the consummation of the transactions contemplated by this Agreement. Merger Partner and the Merger Partner Subsidiary are in compliance with the terms of each such Merger Partner Authorization. All material applications, reports, notices and other documents required to be filed by Merger Partner and the Merger Partner Subsidiary with any Governmental Entity have been timely filed and are complete and correct as of the date filed or as amended prior to the date of this Agreement. Neither Merger Partner nor the Merger Partner Subsidiary nor, to Merger Partner's knowledge, any officer, director or employee of Merger Partner or the Merger Partner Subsidiary, or any Affiliate of Merger Partner involved in any application for any Merger Partner Authorization, has been convicted of any crime or engaged in any conduct that has previously caused or would reasonably be expected to result in (i) disqualification or debarment by the FDA under 21 U.S.C. Sections 335(a) or (b), or any similar Law of any other Governmental Entity, or (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar Law of any Governmental Entity. Merger Partner and the Merger Partner Subsidiary: (i) are and during the three (3) years prior to the date hereof have been in compliance, to the extent applicable, with all Laws applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any pharmaceutical or biological product tested, developed, promoted, marketed, manufactured or distributed by Merger Partner or the Merger Partner Subsidiary; (ii) have not during the three (3) years prior to the date hereof received or been subject to any unresolved FDA Form 483s, FDA Notices of Adverse Findings or warning letters, or any written notice or correspondence from any Governmental Entity alleging or asserting any material noncompliance with any Merger Partner Authorizations; and (iii) have not during the three (3) years prior to the date hereof received written notice that any Governmental Entity has taken or is intending to take action to limit, suspend, modify or revoke any Merger Partner Authorizations and, to the knowledge of Merger Partner, there is no action or proceeding pending or threatened against Merger Partner or the Merger Partner Subsidiary by any Governmental Entity (including any prosecution, injunction, seizure, civil fine, suspension or recall), in each case alleging that Merger Partner or the Merger Partner Subsidiary is in material noncompliance with applicable Laws, regulations or orders implemented by the FDA or any other Governmental Entity exercising comparable authority. Neither Merger Partner nor the Merger Partner Subsidiary nor, to Merger Partner's knowledge, any of their respective officers, directors or employees has (A) made an untrue statement of a material fact or fraudulent statement to any Governmental Entity relating to the Merger Partner Authorizations or failed to disclose a material fact required to be disclosed to any Governmental Entity relating to the Merger Partner Authorizations; or (B) committed an act, made a statement, or failed to make a statement that would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Reg. 46191 (September 10, 1991).

(c) To Merger Partner's knowledge, all studies, tests, preclinical and clinical investigations and trials sponsored or conducted by, or conducted on behalf of, Merger Partner were and, if still pending, are being conducted in compliance with applicable Laws. Merger Partner is not aware of any studies, tests or trials the results of which would cause Merger Partner or the Merger Partner Subsidiary to reasonably believe the results would have a material adverse effect on the studies, tests and trials conducted by or on behalf of Merger Partner or the Merger Partner Subsidiary, and neither Merger Partner nor the Merger Partner Subsidiary has received during the three (3) years prior to the date hereof any written notices from any Governmental Entity, institutional review board, independent ethics committee, data and safety monitoring board, or other oversight body with respect to any clinical or pre-clinical studies or tests, or chemistry, manufacturing, and control quality issues, requiring the termination, suspension or material modification of any such studies or tests or chemistry, manufacturing and control activities and, to Merger Partner's knowledge, there are no facts that would reasonably be expected to give rise to such an action.

3.17 Employees.

(a) To the knowledge of Merger Partner, as of the date of this Agreement, no employee of Merger Partner or Continuing Employee is in material violation of any term of any non-competition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by Merger Partner because of the nature of the business currently conducted by Merger Partner. To the knowledge of Merger Partner, as of the date of this Agreement, no Merger Partner Key Employee or group of Merger Partner Key Employees or Continuing Employee has any plans to terminate employment with Merger Partner or following the Closing with Public Company and its Subsidiaries.

(b) Merger Partner is not a party to or otherwise bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization, nor to the knowledge of Merger Partner, have there been any labor organizing activities with respect to any employees of Merger Partner. Merger Partner is not, and during the three (3) years prior to the date hereof, has not been, the subject of any proceeding asserting that Merger Partner has committed an unfair labor practice or seeking to compel it to bargain with any labor union or labor organization, nor is there or has there been pending or, to the knowledge of Merger Partner, threatened, any labor strike, dispute, walkout, work stoppage, slow-down or lockout or other labor dispute involving Merger Partner.

(c) Merger Partner is and has been for the three (3) years prior to the date hereof in compliance in all material respects with all applicable Laws related to employment (including verification of employment eligibility), employment practices (including without limitation Laws related to discrimination, harassment, and retaliation), terms and conditions of employment and wages and hours (including, without limitation, classification of employees) with respect to any employee (as defined by, or determined in accordance with, applicable Laws). To the knowledge of Merger Partner, all employees of Merger Partner or the Merger Partner Subsidiary and Continuing Employees are lawfully authorized to work in the United States.

(d) Merger Partner has not received written notice of any charge or complaint pending before the Equal Employment Opportunity Commission or other Governmental Entity alleging unlawful discrimination, harassment, retaliation or any other violation of or non-compliance with applicable Law relating to the employment, treatment, or termination of any employees of Merger Partner or the Merger Partner Subsidiary, nor, to the knowledge of Merger Partner, has any such charge been threatened during the three (3) years prior to the date hereof. No current or former employee of Merger Partner or the Merger Partner Subsidiary has, pursuant to internal complaint procedures, made a written complaint of discrimination, retaliation or harassment against a Merger Partner Key Employee or member of Merger Partner's leadership team, nor to Merger Partner's knowledge, has an oral complaint of any of the foregoing been made during the three (3) years prior to the date hereof.

(e) Merger Partner has not caused a plant closing as defined in the Worker Adjustment and Retraining Notification Act (the "WARN Act") affecting any site of employment or one or more operating units within any site of employment, or a mass layoff as defined in the WARN Act, nor has Merger Partner or the Merger Partner Subsidiary been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar foreign, state or local Law.

3.18 Insurance. Merger Partner maintains insurance policies (the "Merger Partner Insurance Policies"), including insurance covering directors and officers for securities Law and other customary liabilities, with reputable insurance carriers against all risks of a character and in such amounts as are usually insured against by similarly situated companies in the same or similar businesses as Merger Partner. Each Merger Partner Insurance Policy is in full force and effect. Merger Partner has complied in all material respects with the provisions of each Merger Partner Insurance Policy under which it is the insured party. No insurer under any Merger Partner Insurance Policy has cancelled or generally disclaimed Liability under any such policy or indicated any intent to do so or not to renew any such policy.

3.19 Brokers; Fees and Expenses. Except as set forth on Section 3.19 of the Merger Partner Disclosure Schedule, no agent, broker, investment banker, financial advisor or other firm or Person is or shall be entitled, as a result of any action, agreement or commitment of Merger Partner, to any broker's, finder's, financial advisor's or other similar fee or commission in connection with any of the transactions contemplated by this Agreement.

3.20 Certain Business Relationships with Affiliates. Except as otherwise set forth on Section 3.20 of the Merger Partner Disclosure Schedule, neither any Affiliate of Merger Partner nor any of its or their equityholders, directors, officers, or employees (a) owns any material property or right, tangible or intangible, which is used in the business of Merger Partner, (b) has any material claim or cause of action against Merger Partner, (c) owes any material money to, or is owed any material money by, Merger Partner, or (d) has or has had any direct or indirect interest of any kind in, or controls or has controlled, or is an officer, manager, director, equityholder, member or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, as applicable, (i) any Person that is a client, customer, supplier, vendor, distributor, lessor, lessee, debtor, creditor or competitor of Merger Partner or (ii) any property, asset or right that is owned, held or used by Merger Partner. Except as would not reasonably be expected to result in a Merger Partner Material Adverse Effect, Section 3.20 of the Merger Partner Disclosure Schedule describes any material Contracts between Merger Partner, on the one hand, and any Affiliate thereof or any officer, manager, director, equityholder or employee of such Affiliate, on the other hand, which were entered into or have been in effect at any time during the three (3) years prior to the date hereof, other than any employment or service Contracts, invention assignment agreements and other Contracts relating to or entered into in connection with any employment or service, including any Contracts relating to stock purchases and awards, stock options and other equity or equity-based incentive arrangements, in each case relating to compensation and entered into in the Ordinary Course of Business.

3.21 Controls and Procedures, Certifications and Other Matters.

(a) Merger Partner and the Merger Partner Subsidiary maintain accurate books and records reflecting their assets and liabilities and maintain proper and adequate internal control over financial reporting that provide assurance that (i) transactions are executed with management's authorization, (ii) transactions are recorded as necessary to permit preparation of the Financial Statements and to maintain accountability for Merger Partner's and the Merger Partner Subsidiary's consolidated assets, (iii) access to assets of Merger Partner and the Merger Partner Subsidiary is permitted only in accordance with management's authorization, (iv) the reporting of assets of Merger Partner and the Merger Partner Subsidiary is compared with existing assets at regular intervals and (v) accounts, notes and other receivables and inventory were recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis.

(b) Neither Merger Partner nor the Merger Partner Subsidiary has extended or maintained credit, arranged for the extension of credit, modified or renewed an extension of credit, in the form of a personal loan or otherwise, to or for any director or executive officer of Merger Partner or the Merger Partner Subsidiary.

(c) Merger Partner satisfies the conditions to qualification as a "smaller reporting company" set forth in 17 C.F.R. §229.10(f)(1).

3.22 Books and Records. The minute books and other similar records of Merger Partner and the Merger Partner Subsidiary contain accurate summaries, in all material respects, of all actions taken at any meetings of Merger Partner's or the Merger Partner Subsidiary's, as applicable, stockholders, the board of directors or any committee thereof, and of all written consents executed in lieu of the holding of any such meeting.

3.23 Ownership of Public Company Common Stock. Except as set forth on Section 3.23 of the Merger Partner Disclosure Schedule, Merger Partner does not and, to the knowledge of Merger Partner, none of Merger Partner's directors, officers, or 5% or greater stockholders directly or indirectly "own," beneficially or otherwise, and at all times during the three (3) years prior to the date of this Agreement, to the knowledge of Merger Partner, none of Merger Partner's directors, officers, or 5% or greater stockholders directly or indirectly has "owned," beneficially or otherwise, any of the outstanding Public Company Common Stock, as those terms are defined in Section 203 of the DGCL. None of Merger Partner and its "affiliates" or "associates" is, or has been at any time during the three (3) years prior to the date of this Agreement, an "interested stockholder" of Public Company or a "beneficial owner" of Public Company Common Stock, as those terms are defined in NRS Chapter 78.

3.24 IT; Privacy and Data Protection.

(a) The information technology systems, networks, software, hardware, databases, websites, and related infrastructure (collectively, the "Merger Partner IT Systems") owned, licensed, leased, or otherwise used by Merger Partner or the Merger Partner Subsidiary perform in all material respects in accordance with their applicable documentation and specifications. The Merger Partner IT Systems are sufficient in all material respects for the current operation of Merger Partner and the Merger Partner Subsidiary as presently conducted. To the knowledge of Merger Partner, the Merger Partner IT Systems do not contain any material bugs, defects, errors, viruses, Trojan horses, or other corruptants that would reasonably be expected to result in a material disruption to, or material degradation of, the performance or functionality of such Merger Partner IT Systems.

(b) Merger Partner and the Merger Partner Subsidiary have complied at all times, and currently comply, in each case in all material respects, with any applicable data protection and privacy Law with respect to their businesses, including, as applicable, with respect to (i) applicable requirements relating to notification and/or registration of processing of personal data with any applicable national data protection regulator, (ii) requests from data subjects under applicable data protection and privacy Laws, and (iii) where necessary, the obtaining of consent to the processing of personal data and/or direct marketing activity. Merger Partner and the Merger Partner Subsidiary have all material rights necessary to process all personal data used in the business of Merger Partner or the Merger Partner Subsidiary, as applicable. Neither Merger Partner nor the Merger Partner Subsidiary has received any written notice or complaint from any individual, third party and/or Governmental Entity, or, to the knowledge of Merger Partner, been threatened with any such written notice or complaint, (x) alleging non-compliance by Merger Partner or the Merger Partner Subsidiary with any applicable data protection and privacy Law (including any prohibition or restriction on the transfer of data to any jurisdiction) or (y) claiming compensation for, or an injunction arising from, non-compliance with any applicable data protection and privacy Law.

(c) Merger Partner and the Merger Partner Subsidiary have established and maintain commercially reasonable technical, physical and organizational controls, policies, procedures, safeguards, measures and security systems, plans and technologies in material compliance with requirements under applicable privacy and data protection Laws. During the three (3) years prior to the date hereof, no material breach or material security incident in relation to Merger Partner's or the Merger Partner Subsidiary's personal data and/or proprietary data has occurred that would require Merger Partner or the Merger Partner Subsidiary to notify individuals or Governmental Entities, and there has been no unauthorized or illegal processing of, or accidental or unlawful destruction, loss or alteration of, any of Merger Partner's or the Merger Partner Subsidiary's personal data and/or proprietary data.

3.25 Post-Closing Payment Obligations. Neither Merger Partner nor the Merger Partner Subsidiary is a party to any Contract or other arrangement that gives rise to an obligation to pay any Contingent Expense after the Closing.

3.26 No Other Representations or Warranties. Merger Partner hereby acknowledges and agrees that, except for the representations and warranties contained in this Agreement, none of Public Company, Merger Sub, Merger Sub II or any other Person on behalf of Public Company, Merger Sub or Merger Sub II makes any express or implied representation or warranty with respect to Public Company, Merger Sub or Merger Sub II or their respective financial condition, business, results of operations, properties, assets, liabilities, or prospects or otherwise or with respect to any other statements made or information provided to Merger Partner or any of its Affiliates in connection with the transactions contemplated hereby, and (subject to the express representations and warranties of Public Company and the Merger Subs set forth in Article IV (in each case as qualified and limited by the Public Company Disclosure Schedule)) none of Merger Partner or any of its Affiliates, stockholders, directors, officers, employees, agents, Representatives or advisors, or any other Person, has relied on any representations, warranties, statements or information (including the accuracy or completeness thereof).

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES OF PUBLIC COMPANY AND THE MERGER SUBS

Except (i) as disclosed in the Public Company SEC Reports filed with the SEC after February 15, 2024, and at least two (2) Business Days prior to the date hereof and publicly available on the SEC's Electronic Data Gathering Analysis and Retrieval system (but excluding any disclosures under the heading "Risk Factors" or "Quantitative and Qualitative Disclosures about Market Risk", any disclosure in any "forward looking statements" disclaimers, and any disclosures in any other section to the extent they are forward-looking statements or cautionary, predictive or forward-looking in nature), or (ii) as expressly set forth herein or in the disclosure schedule delivered by Public Company and the Merger Subs to Merger Partner on the date of this Agreement (the "Public Company Disclosure Schedule"), Public Company and the Merger Subs represent and warrant, jointly and not severally, to Merger Partner as follows:

4.1 Organization, Standing and Power. Each of Public Company and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization. Merger Sub II is a limited liability company duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization. Each of Public Company and the Merger Subs has all requisite corporate or limited liability company power and authority to own, lease and operate its properties and assets and to carry on its business as currently conducted, and is duly qualified to do business and is in good standing (to the extent applicable in such jurisdiction) under the Laws of all jurisdictions in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary, except for such failures to be so qualified or in good standing, individually or in the aggregate, that have not had, and are not reasonably likely to have, a Public Company Material Adverse Effect. Public Company has made available to Merger Partner complete and accurate copies of its Organizational Documents, and copies of any amendments thereto, existing as of the date of this Agreement, and is not in material default under or in violation of any provision of any such documents.

4.2 Capitalization.

(a) As of the date of this Agreement, the authorized capital stock of Public Company consists of 200,000,000 shares of Public Company Common Stock and 20,000,000 shares of preferred stock, $0.0001 par value per share, of which 150,000 shares have been designated as Series A Convertible Redeemable Preferred Stock (the "Public Company Series A Preferred Stock") and 5,000 shares have been designated as Series C Preferred Stock (the "Public Company Series C Preferred Stock" and, together with the Public Company Series A Preferred Stock, the "Public Company Preferred Stock"). The rights and privileges of each class of Public Company's capital stock are as set forth in Public Company's articles of incorporation, as amended (as defined in NRS 78.010(1)(b)). As of the close of business on the Business Day immediately prior to the date of this Agreement, (i) 3,931,829 shares of Public Company Common Stock were issued and outstanding, (ii) 51,479 shares of Public Company Series A Preferred Stock were issued and outstanding, (iii) 2,600 shares of Public Company Series C Preferred Stock were issued and outstanding, and (iv) no shares of Public Company Common Stock were held in the treasury of Public Company or by Subsidiaries of Public Company.

(b) As of the date of this Agreement, there are outstanding options to purchase 1,497,785 shares of Public Company Common Stock (each, a "Public Company Stock Option" and collectively, the "Public Company Stock Options"), 273,491 shares of Public Company Common Stock issuable pursuant to awards of restricted stock units relating to Public Company Common Stock ("Public Company RSU Awards"), 172,650 shares of Public Company Common Stock issuable pursuant to awards of performance-based restricted stock units relating to Public Company Common Stock (the "Public Company PSU Awards" and, together with the Public Company RSU Awards and the Public Company Stock Options, "Public Company Equity Awards") assuming satisfaction of any performance vesting conditions at target levels and 172,650 shares of Public Company Common Stock issuable pursuant to Public Company PSU Awards assuming satisfaction of any performance vesting conditions at maximum levels. Public Company has made available to Merger Partner complete and accurate copies of all stock or equity-related plans, agreements, and arrangements of Public Company, including the Public Company Stock Plans, the standard forms of all award agreements evidencing Public Company Equity Awards, and a copy of each agreement evidencing a Public Company Equity Award that does not conform in all material respects to a standard form agreement. As of the date of this Agreement, (i) no shares of Public Company Common Stock remain available for issuance pursuant to Public Company's Amended and Restated 2023 Equity Incentive Plan (the "Public Company 2023 Plan"); and (ii) 675,363 shares of Public Company Common Stock remain available for future issuance pursuant to Public Company's 2026 Equity Incentive Plan (the "Public Company 2026 Plan" and, together with the Public Company 2023 Plan, the "Public Company Stock Plans"). Public Company has not granted, issued, or authorized the grant or issuance of any Public Company Equity Awards on the Business Day prior to the date of this Agreement or on the date of this Agreement. With respect to each Public Company Equity Award (whether outstanding or previously exercised or settled): (i) each grant of a Public Company Equity Award was duly authorized no later than the date on which such grant was by its terms to be effective by all necessary corporate action, including, as applicable, approval by the Public Company Board (or a duly constituted and authorized committee thereof) or a duly authorized delegate thereof, and any required stockholder approval by the necessary number of votes or written consents; (ii) each such grant was made in accordance with the terms of the applicable Public Company Stock Plan, the Securities Act, the Exchange Act, and all other applicable Laws, and is not and has not been the subject of any internal investigation, review, or inquiry; and (iii) each Public Company Stock Option has an exercise price no less than the fair market value of the underlying shares of Public Company Common Stock on the date of grant, as determined in accordance with Section 409A of the Code.

(c) Section 4.2(c) of the Public Company Disclosure Schedule lists, as of the date hereof, the number of shares of Public Company Common Stock reserved for future issuance pursuant to warrants or other outstanding rights (other than Public Company Stock Options) to purchase shares of Public Company Common Stock outstanding as of the close of business on the Business Day prior to the date of this Agreement (such outstanding warrants or other rights, the "Public Company Warrants") and the agreement or other document under which such Public Company Warrants were granted, and the exercise price, the date of grant and the expiration date thereof.

(d) Except (i) as set forth in this Section 4.2 or in Article II, (ii) as reserved for future grants under the Public Company 2026 Plan, outstanding as of the close of business on the Business Day prior to the date of this Agreement, (iii) as reserved for issuance and issuable upon conversion of outstanding shares of Public Company Preferred Stock, (iv) for the rights to acquire shares pursuant to the Public Company Stock Plans, (v) commitments to issue (x) shares of Public Company Series B Preferred Stock or Public Company Common Stock or (y) warrants to acquire shares of Public Company Series B Preferred Stock or Public Company Common Stock, in each case of clauses (x) and (y), pursuant to the Securities Purchase Agreement in the Concurrent Financing, as of the date of this Agreement, and (vi) as reserved for issuance and issuable upon conversion of the outstanding Public Company Convertible Notes and upon exercise of the Horizon Warrants and the A.G.P. Warrants, (A) there are no equity securities of any class of Public Company, or any security exchangeable into or exercisable for such equity securities, issued, reserved for issuance or outstanding and (B) there are no options, warrants, equity securities, stock appreciation, phantom stock, profit participation, calls, rights, commitments or agreements of any character to which Public Company or any of its Subsidiaries is a party or by which Public Company or any of its Subsidiaries is bound obligating Public Company or any of its Subsidiaries to issue, exchange, transfer, deliver or sell, or cause to be issued, exchanged, transferred, delivered or sold, additional shares of capital stock or other equity interests of Public Company or any security or rights convertible into or exchangeable or exercisable for any such shares or other equity interests, or obligating Public Company or any of its Subsidiaries to grant, extend, accelerate the vesting of, otherwise modify or amend or enter into any such option, warrant, equity security, call, right, commitment or agreement. As of the date of this Agreement, other than pursuant to the Public Company Stock Plans, Public Company is not a party to or bound by any, and to the knowledge of Public Company, there are no, agreements or understandings with respect to the voting (including voting trusts and proxies) or sale or transfer (including agreements imposing transfer restrictions) of any shares of capital stock or other equity interests of Public Company. Except as otherwise set forth on Section 4.2(d) of the Public Company Disclosure Schedule, as contemplated by this Agreement, the Securities Purchase Agreement or described in this Section 4.2(d), there are no registration rights to which Public Company or any of its Subsidiaries is a party or by which it or any of its Subsidiaries is bound with respect to any equity security of any class of Public Company. Stockholders of Public Company are not entitled to dissenters' or appraisal rights under applicable state Law in connection with the Mergers, and the Public Company Board has not adopted or approved any resolution pursuant to the NRS or otherwise granting dissenters', appraisal or similar rights to any holder of shares of Public Company Common Stock or any other equity interests of or in Public Company, or to any other Person.

(e) All outstanding shares of Public Company Common Stock are, and all shares of Public Company Common Stock subject to issuance as specified in Section 4.2(b) and Section 4.2(c) or pursuant to Article II, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, will be, duly authorized, validly issued, fully paid and nonassessable and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of NRS Chapter 78, Public Company's articles of incorporation or bylaws or any agreement to which Public Company is a party or is otherwise bound. There are no obligations, contingent or otherwise, of Public Company to repurchase, redeem or otherwise acquire any shares of Public Company Common Stock. All outstanding shares of Public Company Common Stock have been offered, issued and sold by Public Company in compliance with all applicable federal and state securities Laws.

4.3 Subsidiaries.

(a) Section 4.3(a) of the Public Company Disclosure Schedule sets forth, for each Subsidiary of Public Company (including Merger Sub and Merger Sub II): (i) its name; (ii) the number and type of outstanding Equity Interests and a list of the holders thereof; and (iii) its jurisdiction of organization.

(b) Each Subsidiary of Public Company is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as currently conducted, and is duly qualified to do business and is in good standing (to the extent applicable in such jurisdiction), under the Laws of all jurisdictions in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary, except for such failures to be so organized, qualified or in good standing, individually or in the aggregate, that have not had, and are not reasonably likely to have, a Public Company Material Adverse Effect. All of the outstanding shares of capital stock and other equity securities or interests of each Subsidiary of Public Company are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights and all such shares (other than directors' qualifying shares in the case of non-U.S. Subsidiaries, all of which Public Company has the power to cause to be transferred for no or nominal consideration to Public Company or Public Company's designee) are owned, of record and beneficially, by Public Company or another of its Subsidiaries free and clear of all Liens, claims, pledges, agreements or limitations on Public Company's voting rights. There are no outstanding or authorized options, warrants, rights, agreements or commitments to which Public Company or any of its Subsidiaries is a party or which are binding on any of them providing for the issuance, disposition or acquisition of any capital stock of any Subsidiary of Public Company. There are no outstanding stock appreciation, phantom stock or similar rights with respect to any Subsidiary of Public Company. There are no voting trusts, proxies or other agreements or understandings with respect to the voting of any capital stock of any Subsidiary of Public Company.

(c) Except as set forth on Section 4.3(c) of the Public Company Disclosure Schedule, Public Company does not own any Equity Interests or similar interests in any other Person nor does Public Company control directly or indirectly or have any direct or indirect Equity Interests or similar interests of any nature in any other Person which is not a Subsidiary of Public Company. Except as set forth on Section 4.3(c) of the Public Company Disclosure Schedule, Public Company is not and has not otherwise been, directly or indirectly, a party to, member of or participant in any partnership, joint venture or similar business entity. Public Company has not agreed and is not obligated to make, or is bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Person. Public Company has not, at any time, been a general partner of, and has not otherwise been liable for any of the debts or other obligations of, any general partnership, limited partnership or other Person.

4.4 Authority; No Conflict; Required Filings and Consents.

(a) Each of Public Company, Merger Sub and Merger Sub II has all requisite corporate or limited liability company power and authority to enter into this Agreement and, subject only to the receipt of the approval by the stockholders of Public Company of the Requisite Public Company Stockholder Approvals and the adoption of this Agreement by Public Company in its capacity as the sole stockholder of Merger Sub and sole member of Merger Sub II, to consummate the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, the Public Company Board, at a duly called meeting at which all disinterested members of the Public Company Board were present, by a unanimous vote of those directors voting thereon, (i) determined that the transactions contemplated by this Agreement, including the Mergers, are fair to, and in the best interests of, Public Company and its stockholders and (ii) directed that the Requisite Public Company Stockholder Approvals be submitted to the stockholders of Public Company for their approval and resolved to recommend that the stockholders of Public Company vote in favor of the approval of the Requisite Public Company Stockholder Approvals. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement by Public Company, Merger Sub and Merger Sub II have been duly authorized by all necessary corporate or limited liability company action on the part of each of Public Company, Merger Sub and Merger Sub II, subject only to the required receipt of the Requisite Public Company Stockholder Approvals and the adoption of this Agreement by Public Company in its capacity as the sole stockholder of Merger Sub and sole member of Merger Sub II. This Agreement has been duly executed and delivered by each of Public Company, Merger Sub and Merger Sub II and, assuming the due execution and delivery of this Agreement by Merger Partner and the Securityholder Representative, constitutes the valid and binding obligation of each of Public Company, Merger Sub and Merger Sub II, enforceable against Public Company, Merger Sub and Merger Sub II in accordance with its terms, subject to the Bankruptcy and Equity Exception.

(b) The execution and delivery of this Agreement by each of Public Company, Merger Sub and Merger Sub II do not, and the consummation by Public Company, Merger Sub and Merger Sub II of the transactions contemplated by this Agreement shall not, (i) conflict with, or result in any violation or breach of, any provision of any Organizational Document of Public Company, Merger Sub, Merger Sub II or any other Subsidiary of Public Company, (ii) conflict with, or result in any material violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, constitute a change in control under, require the payment of a penalty under or result in the imposition of any Lien on Public Company's or any of its Subsidiaries' assets (including Public Company Intellectual Property) under any of the terms, conditions or provisions of any Contract required to be disclosed in Section 4.11(a) of the Public Company Disclosure Schedule, or (iii) subject to obtaining the Requisite Public Company Stockholder Approvals and compliance with the requirements specified in clauses (i) through (viii) of Section 4.4(c), conflict with or violate any permit, concession, franchise, license, judgment, injunction, order, decree, statute, Law, ordinance, rule or regulation applicable to Public Company or any of its Subsidiaries or any of its or their properties or assets, except in the case of clauses (ii) and (iii) of this Section 4.4(b), as would not, individually or in the aggregate, reasonably be expected to result in a Public Company Material Adverse Effect.

(c) No consent, approval, license, permit, order or authorization of, or registration, declaration, notice or filing with, any Governmental Entity or any stock market or stock exchange on which shares of Public Company Common Stock are listed for trading is required by or with respect to Public Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement or the consummation by Public Company, Merger Sub or Merger Sub II of the transactions contemplated by this Agreement, except for (i) the filing of the First Certificate of Merger and the Second Certificate of Merger with the Delaware Secretary of State, (ii) the filing of the Form S-4 with the SEC in accordance with the Securities Act, (iii) the filing of the Information Statement with the SEC in accordance with the Exchange Act, (iv) the filing of such reports, schedules or materials under Section 13 of or Rule 14a-12 under the Exchange Act as may be required in connection with this Agreement and the transactions contemplated hereby, (v) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable state securities Laws and the Laws of any foreign country, (vi) the filing of a listing application for the Public Company Common Stock on the NYSE American, in the form required by the NYSE American, with respect to the shares of Public Company Common Stock to be issued pursuant to this Agreement (the "NYSE American Listing Application"), (vii) the filing of the Series B Certificate of Designation with the Nevada Secretary of State, and (viii) such other consents, authorizations, orders, filings, approvals and registrations that, individually or in the aggregate, if not obtained or made, would not be reasonably expected to result in a Public Company Material Adverse Effect.

(d) The only vote or consent of the holders of any class or series of capital stock or other securities of Public Company necessary to approve the Share Issuances is the affirmative written consent of the holders of a majority of the outstanding shares of Public Company's capital stock entitled to vote thereon, voting together as a single class (with the shares of Public Company Series A Preferred Stock voting on the basis set forth in, and subject to the limitations of, Section 9 of the Certificate of Designations of Rights and Preferences of Series A Convertible Preferred Stock of Public Company) (the "Requisite Public Company Stockholder Approvals"). There are no bonds, debentures, notes or other indebtedness of Public Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of Public Company may vote.

4.5 SEC Filings; Financial Statements; Information Provided.

(a) Public Company has filed or furnished all registration statements, forms, reports, certifications and other documents required to be filed or furnished by Public Company with the SEC for a period of at least twelve (12) calendar months immediately preceding the execution of this Agreement. All such registration statements, forms, reports, certifications, proxy statements, information statements and other documents (other than preliminary materials to the extent superseded by a definitive filing), as amended prior to the date hereof, and those that Public Company may file or furnish after the date hereof until the Closing, are referred to herein as the "Public Company SEC Reports." All of the Public Company SEC Reports (i) were or will be filed or furnished, as applicable, on a timely basis, (ii) at the time filed or furnished (or if amended prior to the date hereof, when so amended), complied, or will comply when filed or furnished, as to form in all material respects with the requirements of the Securities Act and the Exchange Act applicable to such Public Company SEC Reports and (iii) did not or will not at the time they were filed or furnished (or if amended prior to the date hereof, when so amended) or are filed or furnished contain any untrue statement of a material fact or omit to state a material fact required to be stated in such Public Company SEC Reports or necessary in order to make the statements in such Public Company SEC Reports, in the light of the circumstances under which they were made, not misleading, in any material respect.

(b) Each of the financial statements (including, in each case, any related notes and schedules) contained or to be contained in the Public Company SEC Reports at the time filed (or if amended prior to the date hereof, when so amended) (i) complied or will comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, (ii) were or will be prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and at the dates involved (except as may be indicated in the notes to such financial statements or, in the case of unaudited interim financial statements, as permitted by the SEC) and (iii) fairly presented or will fairly present in all material respects the financial position of Public Company and its Subsidiaries as of the dates indicated and the results of its operations and cash flows for the periods indicated, except that the unaudited interim financial statements were or are subject to normal and recurring year-end adjustments that are not expected to be material in amount. The balance sheet of Public Company as of June 30, 2026, is referred to herein as the "Public Company Balance Sheet."

(c) Since January 1, 2026, and prior to the date of this Agreement, Public Company has not received any correspondence from the NYSE American or the staff thereof relating to the delisting or maintenance of listing of the Public Company Common Stock on the NYSE American. As of the date hereof, there are no outstanding or unresolved comments in comment letters received from the SEC staff with respect to any Public Company SEC Reports.

(d) Public Company's auditor has at all times since its engagement by Public Company been "independent" with respect to Public Company within the meaning of Regulation S-X under the Exchange Act and, to the knowledge of Public Company, in compliance with subsections (g) through (l) of Section 10A of the Exchange Act (to the extent applicable) and the related rules and regulations promulgated by the SEC and the Public Company Accounting Oversight Board thereunder.

(e) The information to be supplied by or on behalf of Public Company for inclusion in the Form S-4 and the Information Statement to be sent to the stockholders of Public Company and Merger Partner in connection with the Requisite Public Company Stockholder Approvals, which information shall be deemed to include all material information about or relating to Public Company, the Requisite Public Company Stockholder Approvals or the Public Company Written Consent, shall not, in the case of the Form S-4, at the time it becomes effective under the Securities Act, and, in the case of the Information Statement, on the date the Information Statement and any amendments or supplements thereto are first filed with the SEC and at the time it is first mailed to stockholders of Public Company or Merger Partner, or at any time thereafter up to and including the Initial Effective Time, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that Public Company makes no representations or warranties as to the information contained in or omitted from the Form S-4 or Information Statement or made in reliance upon and in conformity with information furnished in writing to Public Company by or on behalf of Merger Partner specifically for inclusion in the Form S-4 or Information Statement which is misleading by virtue of such reliance or conformity.

(f) Section 4.5(f) of the Public Company Disclosure Schedule sets forth all Indebtedness of Public Company and its Subsidiaries as of the date hereof, and except as set forth in Section 4.5(f) of the Public Company Disclosure Schedule, the execution and delivery of this Agreement by Public Company and the consummation by Public Company of the transactions contemplated by this Agreement will not result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, constitute a change in control under, or otherwise accelerate amounts payable or increase the amounts outstanding in respect of such Indebtedness.

4.6 No Undisclosed Liabilities. Neither Public Company nor any of its Subsidiaries has any material Liability, except for (i) Liabilities described in the Public Company SEC Reports, (ii) Liabilities shown on the Public Company Balance Sheet, (iii) Liabilities of a type required to be shown on the Public Company Balance Sheet that have arisen since the date of the Public Company Balance Sheet in the Ordinary Course of Business (and which have not resulted from a breach of contract, breach of warranty, tort, infringement or violation of Law), (iv) Liabilities for Transaction Expenses incurred in connection with the transactions contemplated by this Agreement, or (v) Liabilities which would not have a Public Company Material Adverse Effect.

4.7 Absence of Certain Changes or Events. During the period beginning on the date of the Public Company Balance Sheet and ending on the date hereof, Public Company and its Subsidiaries have conducted their respective businesses only in the Ordinary Course of Business and, since such date, except as otherwise set forth on Section 4.7 of the Public Company Disclosure Schedule, there has not been (a) any change, event, circumstance, development or effect that, individually or in the aggregate, has had, or is reasonably expected to have, a Public Company Material Adverse Effect or (b) any other action or event that would have required the consent of Merger Partner pursuant to Section 5.2 had such action or event occurred after the date of this Agreement.

4.8 Taxes.

(a) All material Tax Returns required to be filed by or with respect to Public Company or any of its Subsidiaries have been properly and timely filed, and all such Tax Returns are true, correct and complete in all material respects. All material Taxes due and payable by Public Company or its Subsidiaries (whether or not shown on any Tax Return) have been timely paid.

(b) Neither Public Company nor any of its Subsidiaries is, nor has it ever been, a member of an affiliated group with which it has filed (or been required to file) consolidated, combined, unitary or similar U.S. federal Tax Returns, other than a group of which the common parent is Public Company. Neither Public Company nor any of its Subsidiaries is party to any Tax indemnity, Tax sharing, Tax allocation or similar agreement, other than customary commercial Contracts not primarily related to Taxes. Neither Public Company nor any of its Subsidiaries has any material Liability for Taxes of another Person (other than Public Company or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any comparable or similar provision of state, local or non-U.S. Law), as a transferee or successor, or otherwise by operation of Law.

(c) All material Taxes that Public Company and each of its Subsidiaries was required by Law to withhold or collect have been duly withheld or collected and, to the extent required, have been properly paid to the appropriate Governmental Entity.

(d) No examination or audit of any Tax Return of Public Company or any of its Subsidiaries by any Governmental Entity is currently in progress or, to the knowledge of Public Company, has been threatened by any Governmental Entity. No deficiencies for material Taxes of Public Company or any of its Subsidiaries have been claimed, proposed or assessed by any Governmental Entity in writing that remain unresolved. No Governmental Entity in a jurisdiction in which Public Company or any of its Subsidiaries does not file a particular type of Tax Return or pay a particular type of Tax has made a written claim that Public Company or any of its Subsidiaries is or may be required to file such Tax Returns or be subject to such Tax in such jurisdiction, which claim remains unresolved. Neither Public Company nor any of its Subsidiaries has (i) waived any statute of limitations with respect to material Taxes or agreed to extend the period for assessment or collection of any material Taxes (other than any automatic extension granted in the Ordinary Course of Business and consistent with past custom and practice of Public Company or the relevant Subsidiary), which waiver or extension is still in effect, or (ii) requested any extension of time within which to file any material Tax Return (other than any extension granted in the Ordinary Course of Business and consistent with past custom and practice of Public Company or the relevant Subsidiary).

(e) Except as set forth on Section 4.8(e) of the Public Company Disclosure Schedule, neither Public Company nor any of its Subsidiaries has made any payment or provided any benefit, is obligated to make any payment or provide any benefit, or is a party to any plan, program, policy, agreement or arrangement that could obligate it to make, and neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in conjunction with additional or subsequent events, including any termination of employment or service), will result in any payment or provide any benefit that may be treated as an "excess parachute payment" under Section 280G of the Code (without regard to Sections 280G(b)(4) and 280G(b)(5) of the Code).

(f) Public Company is not, and has not been during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code.

(g) Public Company has not distributed to its stockholders or security holders stock or securities of a controlled corporation, nor has stock or securities of Public Company been distributed, in a transaction to which Section 355 of the Code applies in the prior two (2) years.

(h) There are no Liens with respect to Taxes upon any of the assets or properties of Public Company or any of its Subsidiaries, other than Permitted Liens.

(i) Neither Public Company nor any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of any (i) adjustments under Section 481 of the Code (or any similar adjustments under any provision of corresponding U.S. state, local, or non-U.S. Law) or use of an improper method of accounting, in each case, for a taxable period (or portion thereof) ending on or prior to the Closing Date, (ii) installment sale or other open transaction disposition made prior to the Closing Date outside the Ordinary Course of Business, (iii) closing agreement within the meaning of Section 7121 of the Code (or any similar or analogous agreement entered into under corresponding U.S. state, local, or non-U.S. Law) or (iv) prepaid amount or deferred revenue received prior to the Closing Date outside the Ordinary Course of Business.

(j) Neither Public Company nor any of its Subsidiaries has participated in any "listed transaction" as defined in Treasury Regulations Section 1.6011-4(b)(2).

(k) Neither Public Company nor any of its Subsidiaries is a party to any joint venture, partnership, or other arrangement that is classified as a partnership for U.S. federal income Tax purposes. Public Company is and has since the date of its formation been classified as an association taxable as a corporation for U.S. federal income Tax purposes. The Tax classification of each Subsidiary of Public Company is set forth on Section 4.8(k) of the Public Company Disclosure Schedule.

(l) None of the capital stock of Public Company is subject to a "substantial risk of forfeiture" within the meaning of Section 83 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law). Each Person who was issued stock in Public Company in connection with the performance of services that was subject to a "substantial risk of forfeiture" within the meaning of Section 83 of the Code made a timely election with respect to such stock pursuant to Section 83(b) of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law).

(m) Neither Public Company nor any of its Subsidiaries is subject to income Tax in any country other than its country of incorporation, organization or formation by virtue of having employees, a permanent establishment or other fixed place of business in that country.

4.9 Owned and Leased Real Properties.

(a) Neither Public Company nor any of its Subsidiaries owns or has ever owned any real property.

(b) Except as otherwise set forth on Section 4.9(b) of the Public Company Disclosure Schedule, (i) neither Public Company nor any of its Subsidiaries as of the date of this Agreement leases, subleases, licenses or otherwise occupies any real property nor is party to any lease, sublease, license or any other occupancy agreement (collectively, the "Public Company Leases") and (ii) all of its previous Public Company Leases have been terminated and neither Public Company nor any of its Subsidiaries has any remaining affirmative obligations under such Public Company Leases and termination agreements. Neither Public Company nor any of its Subsidiaries is party to any agreement or subject to any claim that may require the payment of any real estate brokerage commissions. Neither Public Company nor any of its Subsidiaries nor, to the knowledge of Public Company, any other party is in breach or default and no event has occurred, is pending or, to the knowledge of Public Company, is threatened, which, after the giving of notice, with lapse of time, or otherwise, would constitute any such breach or default under any of the Public Company Leases, except where the existence of such defaults, individually or in the aggregate, has not had, and is not reasonably likely to result in, the loss of a material right or in a material Liability of Public Company or any of its Subsidiaries. Neither Public Company nor any of its Subsidiaries leases, subleases or licenses any real property to any Person other than Public Company and its Subsidiaries. Public Company has made available to Merger Partner complete and accurate copies of all Public Company Leases.

4.10 Intellectual Property.

(a) Section 4.10(a) of the Public Company Disclosure Schedule sets forth a complete and accurate list of all Public Company Registrations, in each case enumerating specifically the applicable filing or registration number, title, jurisdiction in which filing was made or from which registration issued, date of filing or issuance, and names of all current applicant(s) and registered owner(s), as applicable, except that, for any Public Company Registrations that are Internet domain names or social media accounts and identifiers, such enumeration shall be the applicable account name or number, the domain registrar or social media company and the registered owner(s). To the knowledge of Public Company, all assignments of Public Company Registrations to Public Company have been properly executed, and, to the knowledge of Public Company, all issuance, renewal, maintenance and other payments that are or have become due with respect thereto have been timely paid (other than any such payments for which a bona fide grace period applies under applicable Law) by or on behalf of Public Company or any of its Subsidiaries. To the knowledge of Public Company, all Public Company Registrations are valid and enforceable.

(b) There are no inventorship challenges, *inter partes* proceedings, opposition or nullity proceedings or interferences declared, commenced or provoked, or, to the knowledge of Public Company, threatened, with respect to any Patent Rights included in the Public Company Registrations. None of the Patent Rights included in the Public Company Registrations have been abandoned. Public Company and each of its Subsidiaries have complied with their respective duties of candor and disclosure to the United States Patent and Trademark Office and any relevant foreign patent office with respect to all patent and Trademark applications filed by or on behalf of Public Company and have made no material misrepresentation in such applications. Public Company has no knowledge of any information that would preclude Public Company or any of its Subsidiaries from having clear title to the Public Company Registrations included in the Public Company Owned Intellectual Property.

(c) (i) Public Company is the sole and exclusive owner of all Public Company Owned Intellectual Property, free and clear of any Liens, other than (x) Permitted Liens, and (y) any joint owners of the Public Company Owned Intellectual Property listed in Section 4.10(c) of the Public Company Disclosure Schedule, and (ii) Public Company and each of its Subsidiaries have the valid and sufficient right to use all other Intellectual Property used in or reasonably necessary for the operation of its business as currently conducted and proposed to be conducted in the Public Company SEC Reports. None of the Public Company Intellectual Property is subject to any orders, decrees or injunctions.

(d) To the knowledge of Public Company, the Patent Rights included in the Public Company Owned Intellectual Property contain one or more claims that cover the composition of matter, method of use or method of manufacture of each Public Company Product.

(e) Public Company, or any of its Subsidiaries, as applicable, has taken reasonable measures to protect the proprietary nature of each item of Public Company Owned Intellectual Property, and to maintain in confidence all trade secrets and confidential information comprising a part thereof. To Public Company's knowledge, there has been no unauthorized disclosure of any trade secrets or confidential information (including any third party proprietary or confidential information) in the possession, custody or control of Public Company or any of its Subsidiaries.

(f) To the knowledge of Public Company, the operations of Public Company and its Subsidiaries as currently conducted do not infringe, misappropriate or otherwise violate and have not in the past three (3) years infringed, misappropriated or otherwise violated any valid and enforceable Intellectual Property rights of any individual or entity. To Public Company's knowledge, no individual or entity has infringed, misappropriated or otherwise violated any material Public Company Owned Intellectual Property or any material rights under the Public Company Intellectual Property that are exclusively licensed to Public Company or any of its Subsidiaries, and neither Public Company nor any of its Subsidiaries has filed or threatened in writing any claims alleging that a third party or Worker has infringed, misappropriated or otherwise violated any Public Company Intellectual Property. No individual or entity has filed or, to Public Company's knowledge, threatened any claims alleging that Public Company or any of its Subsidiaries has infringed, misappropriated or otherwise violated any individual's or entity's Intellectual Property nor has Public Company or any of its Subsidiaries received any written notification that a license under any other individual's or entity's Intellectual Property is or may be required.

(g) Public Company has made available to Merger Partner copies of all material written complaints, claims, notices or threats, and disclosed to Merger Partner all material non-written complaints, claims, notices or threats, in each case, concerning the infringement, violation or other misappropriation of any Public Company Intellectual Property.

(h) Section 4.10(h) of the Public Company Disclosure Schedule identifies (i) each Contract pursuant to which Public Company or any of its Subsidiaries has granted any rights to any Public Company Licensed Intellectual Property, and (ii) each Contract pursuant to which Public Company or any of its Subsidiaries has granted any joint ownership interest or contingent right in or to any item of Public Company Owned Intellectual Property, in each case of clauses (i) and (ii), other than Excluded Contracts.

(i) Section 4.10(i) of the Public Company Disclosure Schedule identifies (i) each Contract pursuant to which Public Company or any of its Subsidiaries has obtained any rights to any Public Company Licensed Intellectual Property and (ii) each Contract pursuant to which Public Company or any of its Subsidiaries has obtained any joint or sole ownership interest or contingent right in or to any item of Public Company Owned Intellectual Property, in each case of clauses (i) and (ii), other than Excluded Contracts.

(j) To the knowledge of Public Company, no past or present Worker of Public Company or any of its Subsidiaries is in default or breach of any term of any employment Contract, non-disclosure Contract, assignment of invention Contract or similar Contract between such Worker and Public Company or any of its Subsidiaries, as applicable, relating to the protection, ownership, development, use, assignment or transfer of Public Company Intellectual Property. To the extent that any Public Company Owned Intellectual Property has been conceived, reduced to practice, authored, developed or created for Public Company or any of its Subsidiaries by any individual while a Worker, Public Company or such Subsidiary has obtained the entire and unencumbered right, title and interest therein and thereto by operation of Law or by valid written assignment.

(k) The execution and delivery of this Agreement by Public Company does not, and the consummation by Public Company of the transactions contemplated by this Agreement shall not, result in (i) a material breach of or default under any agreement governing any Public Company Intellectual Property; (ii) the grant or transfer to any third party of any new license or other interest under, the abandonment, assignment to any third party, or modification or loss of any right with respect to, any Public Company Intellectual Property in any material respect; (iii) the grant or transfer to any third party of any license or other interest under, or any covenant not to sue in respect of, any Merger Partner Intellectual Property; or (iv) Merger Partner, the Merger Partner Subsidiary, Public Company, any of its Subsidiaries or any of their respective Affiliates being obligated to pay any penalty or new or increased royalty or fee to any individual or entity under any agreement governing any Public Company Intellectual Property.

(l) No funds, facilities, Intellectual Property, personnel or other resources of any Governmental Entity or any university, college, research institute or other educational institution are being used, or have been used at any time, to create, reduce to practice, or develop Public Company Owned Intellectual Property (or, to the knowledge of Public Company, any Public Company Licensed Intellectual Property), except for any such use that does not result in such Governmental Entity or institution obtaining any ownership rights to such Public Company Intellectual Property or the right to receive royalties or other payments for the practice of such Public Company Intellectual Property, including "march in" or co-ownership rights in any Public Company Intellectual Property or any claim, option or other right to any of the foregoing.

(m) (i) Neither Public Company nor any of its Subsidiaries has incorporated, embedded, linked, or otherwise used any software or other material that is licensed under any Open Source Materials into, or in connection with, any product or service of Public Company or any of its Subsidiaries in a manner that (A) requires or conditions the use or distribution of such product or service on the disclosure, licensing, or distribution of any source code of any Public Company Owned Intellectual Property, (B) requires or conditions the use or distribution of such product or service on the granting to any third party of any rights or immunities under any Public Company Owned Intellectual Property (including any Patent Rights), (C) imposes any restriction on the consideration to be charged for the distribution or licensing of any Public Company Owned Intellectual Property, product, or service, or (D) creates, or purports to create, any obligations for Public Company or any of its Subsidiaries with respect to any Public Company Owned Intellectual Property, or grants, or purports to grant, to any third party any rights or immunities under any Public Company Owned Intellectual Property; and (ii) Public Company and each of its Subsidiaries have complied in all material respects with all applicable terms and conditions of all licenses for Open Source Materials used by or on behalf of Public Company or any of its Subsidiaries.

4.11 Contracts.

(a) Section 4.11(a) of the Public Company Disclosure Schedule lists the following Contracts of Public Company and its Subsidiaries in effect as of the date of this Agreement (in each case, excluding Excluded Contracts):

(i) any Contract (or group of related Contracts) for the purchase or sale of products or for the furnishing or receipt of services (A) which expressly requires future payments by or to Public Company or any of its Subsidiaries in excess of $150,000 annually, or (B) in which Public Company or any of its Subsidiaries has granted manufacturing rights, "most favored nation" pricing provisions or marketing or distribution rights relating to any products or territory, or has agreed to purchase goods or services exclusively from a particular party or has granted a right of first offer, right of first refusal, or right of first negotiation in favor of any third party;

(ii) any Contract under which Public Company or any of its Subsidiaries is prohibited from selling, licensing or otherwise distributing any of its technology or products, or providing services to, customers or potential customers or any class of customers, in any geographic area, during any period of time or any segment of the market or line of business;

(iii) any (A) employment Contract with a Public Company Key Employee and (B) individual independent contractor or consulting Contract that involves or could involve payments in excess of $200,000 within any twelve (12) month period;

(iv) any Contract, plan, policy or program providing for retention or stay pay, change in control payments or transaction-based bonuses;

(v) any Contract relating to any agreement of indemnification or guaranty not entered into in the Ordinary Course of Business;

(vi) any Contract relating to the disposition or acquisition of material assets or any ownership interest in Public Company or any of its Subsidiaries, in each case, involving payments in excess of $100,000 in the aggregate;

(vii) any settlement Contract or settlement-related Contract (including any Contract in connection with which any employment-related claim is settled) under which either side has remaining financial obligations;

(viii) any dealer, distribution, joint marketing, joint venture, joint development, partnership, strategic alliance, collaboration, development agreement or outsourcing arrangement;

(ix) any Contract for the conduct of research studies, pre-clinical or clinical studies, manufacturing, distribution, supply, marketing or co-promotion of any products in development by, or which has been or which is being marketed, distributed, supported, sold or licensed out, in each case, by or on behalf of Public Company or any of its Subsidiaries;

(x) except with respect to Indebtedness between or among Public Company and its Subsidiaries, any Contract relating to (A) Indebtedness or (B) any financial guaranty;

(xi) any Contract or commitment with any Person, including any financial advisor, broker, finder, investment banker, attorney or other Person, providing advisory services or other services for Public Company or any of its Subsidiaries in connection with the transactions contemplated by this Agreement; and

(xii) any Contract that involved or would reasonably be expected to result in (A) the grant or transfer to any third party of any new license or other interest under, the abandonment, assignment to any third party, or modification or loss of any right with respect to, or the creation of any Lien (excluding a Permitted Lien) on any Public Company Intellectual Property, (B) the grant or transfer to any third party of any license or other interest under, or any covenant not to sue with respect to, any Public Company Intellectual Property, or (C) Public Company or any of its Subsidiaries being obligated to pay any penalty or new or increased royalty or fee to any individual or entity under any agreement governing any Public Company Intellectual Property.

(b) Public Company has made available to Merger Partner a complete and accurate copy of each Contract listed in Sections 4.10(a), 4.10(h), 4.10(i) and 4.11(a) of the Public Company Disclosure Schedule. With respect to each Contract so listed or that should be listed: (i) the Contract is legal, valid, binding and enforceable and in full force and effect against Public Company and/or its Subsidiaries, as applicable, and, to the knowledge of Public Company, against each other party thereto, as applicable, subject to the Bankruptcy and Equity Exception; and (ii) none of Public Company, its Subsidiaries nor, to the knowledge of Public Company, any other party, is in material breach or violation of, or default under, any such Contract, and no event has occurred, is pending or, to the knowledge of Public Company, is threatened, which, with or without notice or lapse of time, or both, would constitute a material breach or default by Public Company, its Subsidiaries or, to the knowledge of Public Company, any other party under such Contract, except for such breaches, violations or defaults that, individually or in the aggregate, have not had, and are not reasonably likely to have, a Public Company Material Adverse Effect.

4.12 Litigation. Except as otherwise set forth on Section 4.12 of the Public Company Disclosure Schedule, as of the date of this Agreement, there is no action, suit, proceeding, claim, arbitration or investigation before any Governmental Entity or before any arbitrator that is pending or has been threatened in writing against Public Company or any of its Subsidiaries that (i) seeks either damages in excess of $250,000 or equitable relief or (ii) in any manner challenges or seeks to prevent, enjoin, alter or delay the transactions contemplated by this Agreement. There are no material judgments, orders or decrees outstanding against Public Company or any of its Subsidiaries.

4.13 Environmental Matters.

(a) Except for such matters that, individually or in the aggregate, have not had, and are not reasonably likely to have, a Public Company Material Adverse Effect: (i) Public Company and each of its Subsidiaries have complied in all material respects with all applicable Environmental Laws; (ii) the properties currently or, to the knowledge of Public Company, formerly owned, leased or operated by Public Company or any of its Subsidiaries (including soils, groundwater, surface water, buildings or other structures) are and were not contaminated with any Hazardous Substances in a manner or amounts that would be reasonably likely to create a material Liability under any Environmental Law or relating to Hazardous Substances; (iii) neither Public Company nor any of its Subsidiaries has received written notice from any party alleging actual or potential material Liability for any Hazardous Substance disposal or contamination on the property of any third party; and (iv) neither Public Company nor any of its Subsidiaries has released any Hazardous Substance into the environment in a manner or amounts that would be reasonably likely to create a material Liability under any Environmental Law or relating to Hazardous Substances.

(b) As of the date of this Agreement, neither Public Company nor any of its Subsidiaries has received any written notice, demand, letter, claim or request for information alleging that Public Company or any of its Subsidiaries may be in material violation of or have material Liability or obligations under, any Environmental Law.

(c) Neither Public Company nor any of its Subsidiaries is subject to any orders, decrees, injunctions or other arrangements with any Governmental Entity or is subject to any indemnity or other agreement with any third party relating to any material Liability under any Environmental Law or relating to Hazardous Substances.

4.14 Compliance With Laws. Except as would not reasonably be expected to result in a Public Company Material Adverse Effect, Public Company and each of its Subsidiaries have during the last three (3) years complied with, are not in material violation of, and, as of the date of this Agreement, have not received any written notice from any Governmental Entity alleging any violation with respect to, any applicable provisions of any Law related to the conduct of their respective business or the ownership or operation of their respective properties or assets.

4.15 Permits and Regulatory Matters.

Except as would not reasonably be expected to result in a Public Company Material Adverse Effect:

(a) Public Company and each of its Subsidiaries have all required Permits that are material to the conduct of their businesses as currently conducted, including all such Permits required by the FDA, such as authorization of an IND, or by any other Regulating Authorities (the "Public Company Authorizations").

(b) All Permits that are necessary for the conduct of the business of Public Company as currently conducted are in full force and effect. No Public Company Authorization shall cease to be effective as a result of the consummation of the transactions contemplated by this Agreement. Public Company and its Subsidiaries are in compliance in all material respects with the terms of each such Public Company Authorization. All material applications, reports, notices and other documents required to be filed by Public Company and its Subsidiaries with all Governmental Entities have been timely filed and are complete and correct in all material respects as of the date filed or as amended prior to the date of this Agreement. None of Public Company, its Subsidiaries nor, to Public Company's knowledge, any officer, employee or agent of Public Company or any of its Subsidiaries has been convicted of any crime or engaged in any conduct that has previously caused or would reasonably be expected to result in (i) disqualification or debarment by the FDA under 21 U.S.C. Sections 335(a) or (b), or any similar Law of any other Governmental Entity, or (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar Law of any Governmental Entity.

(c) (i) Public Company and its Subsidiaries are and during the last three (3) years have been in material compliance, to the extent applicable, with all Laws applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any pharmaceutical or biological product tested, developed, promoted, marketed, manufactured or distributed by Public Company; (ii) neither Public Company nor any of its Subsidiaries has received during the last three (3) years any written notices or correspondence from any Governmental Entity alleging or asserting any material noncompliance with any Public Company Authorizations; and (iii) neither Public Company nor any of its Subsidiaries has received during the last three (3) years written notice that any Governmental Entity has taken or is intending to take action to limit, suspend, modify or revoke any Public Company Authorizations (except where such limitation, suspension, modification, or revocation would not reasonably be expected to have a Public Company Material Adverse Effect) and, to the knowledge of Public Company, there is no action or proceeding pending or threatened against Public Company by a Governmental Entity (including any prosecution, injunction, seizure, civil fine, suspension or recall), in each case alleging that Public Company or any of its Subsidiaries is in material noncompliance with applicable Laws, regulations or orders implemented by the FDA or any other Governmental Entity exercising comparable authority. Neither Public Company nor any of its Subsidiaries nor, to Public Company's knowledge, any of their respective officers, employees or agents has made an untrue statement of a material fact or fraudulent statement to any Governmental Entity relating to the Public Company Authorizations or failed to disclose a material fact required to be disclosed to any Governmental Entity relating to the Public Company Authorizations.

(d) To Public Company's knowledge, all studies, tests, preclinical and clinical investigations and trials sponsored or conducted by, or conducted on behalf of, Public Company or any of its Subsidiaries were and, if still pending, are being conducted in compliance in all material respects with applicable Laws. Public Company is not aware of any studies, tests or trials the results of which would cause Public Company or any of its Subsidiaries to reasonably believe the results would have a material adverse effect on the studies, tests and trials conducted by or on behalf of Public Company or any of its Subsidiaries, and neither Public Company nor any of its Subsidiaries has received during the last three (3) years any written notices from any Governmental Entity, institutional review board, independent ethics committee, data and safety monitoring board, or other oversight body with respect to any clinical or pre-clinical studies or tests, or chemistry, manufacturing, and control quality issues, requiring the termination, suspension or material modification of any such studies, tests or chemistry, manufacturing and control activities and, to Public Company's knowledge, there are no facts that would reasonably be expected to give rise to such an action (except where such material modification would not reasonably be expected to have a Public Company Material Adverse Effect, such as modifications that are part of routine correspondence with or sponsor-solicited feedback from any Governmental Entity).

4.16 Insurance. Public Company and its Subsidiaries maintain insurance policies (the "Public Company Insurance Policies"), including insurance covering directors and officers for securities Law and other customary liabilities, with reputable insurance carriers against all risks of a character and in such amounts as are usually insured against by similarly situated companies in the same or similar businesses. Each Public Company Insurance Policy is in full force and effect. Except as set forth on Section 4.16 of the Public Company Disclosure Schedule, none of the Public Company Insurance Policies shall terminate or lapse (or be affected in any other adverse manner) by reason of any of the transactions contemplated by this Agreement. Public Company and each of its Subsidiaries have complied in all material respects with the provisions of each Public Company Insurance Policy under which it is the insured party. No insurer under any Public Company Insurance Policy has cancelled or generally disclaimed Liability under any such policy or indicated any intent to do so or not to renew any such policy. Public Company has delivered to Merger Partner accurate and complete copies of all material insurance policies and all material self-insurance programs and arrangements relating to the business, assets, liabilities and operations of Public Company and its Subsidiaries.

4.17 Employee Benefit Plans.

(a) Each Public Company Employee Plan is and has been established and administered in all material respects in compliance with ERISA, the Code, the ACA, and all other applicable Laws and the regulations thereunder and in accordance with its terms, and each of Public Company and its Subsidiaries has in all material respects met its obligations with respect to such Public Company Employee Plan. All required contributions to, and premiums payable in respect of, each Public Company Employee Plan have been timely made within the time periods, if any, prescribed by ERISA, the Code or other applicable Law or, to the extent not required to be made on or before the date of this Agreement, have been properly accrued on Public Company's financial statements in accordance with GAAP. There is and has in the past three (3) years been no audit, investigation or other proceeding (including any voluntary correction application) pending against or involving any Public Company Employee Plan, and to the knowledge of Public Company, no such audit, investigation or other proceeding is or has in the past three (3) years been threatened.

(b) With respect to the Public Company Employee Plans, there are no material benefit obligations for which contributions have not been made or properly accrued and there are no material benefit obligations that have not been accounted for by reserves, or otherwise properly footnoted in accordance with GAAP, on the financial statements of Public Company or any of its Subsidiaries.

(c) All Public Company Employee Plans that are intended to be qualified under Section 401(a) of the Code have received determination or opinion letters from the IRS to the effect that such Public Company Employee Plans are qualified and the plans and trusts related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, no such determination or opinion letter has been revoked and, to the knowledge of Public Company, no revocation has been threatened and no event has occurred that would reasonably be expected to adversely affect the qualified status of any such Public Company Employee Plan.

(d) Neither Public Company nor any of its Subsidiaries nor any of their respective ERISA Affiliates has (i) ever maintained, contributed to, or had any Liability with respect to an Employee Benefit Plan that is or was a defined benefit pension plan as defined in Sections 3(2) and 3(35) of ERISA or was ever subject to Section 412 or 430 of the Code or Title IV of ERISA, or (ii) ever been obligated to contribute to a "multiemployer plan" (as defined in Section 3(37) or 4001(a)(3) of ERISA). No Public Company Employee Plan that is intended to be qualified under Section 401(a) of the Code is funded by, associated with or related to a "voluntary employees' beneficiary association" within the meaning of Section 501(c)(9) of the Code. No Public Company Employee Plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA.

(e) No Public Company Employee Plan provides, and neither Public Company nor any of its ERISA Affiliates has any obligation to provide, any post-termination health, disability or life insurance benefits to any individual, except as required by (i) COBRA or similar state Law or (ii) contractually required subsidies for COBRA coverage during a severance period under an agreement listed on Section 4.17(e) of the Public Company Disclosure Schedule.

(f) Each Public Company Employee Plan that is a group health plan under Section 733(a)(1) of ERISA has satisfied, in all material respects, all obligations under COBRA and each applicable state Law relating to continuation of health coverage for participants and beneficiaries with respect to any qualifying event that has occurred on or before the Closing Date. Neither Public Company nor any of the Public Company Employee Plans has incurred (whether or not assessed), or is reasonably expected to incur or to be subject to, any Tax, penalty, assessment, or other Liability that may be imposed under the ACA or Sections 4980B, 4980D, 4980H, 6721 or 6722 of the Code or with respect to any requirement to timely file ACA information returns with the IRS or provide statements to participants under Section 6056 or 6055 of the Code or state requirements as applicable, or pursuant to Sections 4976 through 4980 of the Code or Title I of ERISA with respect to any of the Public Company Employee Plans. No IRS Letter 226J, 5699, 5698, or IRS Notice 972CG has been issued to or with respect to Public Company or any Public Company Employee Plan.

(g) Except as contemplated by this Agreement or as set forth on Section 4.17(g) of the Public Company Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in conjunction with additional or subsequent events, including any termination of employment or service), will (i) result in any payment (including any severance or bonus payment) becoming due to any current or former employee or other individual service provider of Public Company or any of its Subsidiaries, (ii) result in any forgiveness of indebtedness to any current or former employee or other individual service provider of Public Company or any of its Subsidiaries, (iii) increase, or result in an acceleration of the time of payment or vesting of, the compensation or benefits otherwise due to any current or former employee or other individual service provider of Public Company or any of its Subsidiaries, (iv) trigger any payment or funding of any compensation or benefits under any Public Company Employee Plan, or (v) result in any restriction on the right of Public Company, Merger Partner or any of their respective Subsidiaries to merge, amend, terminate or transfer any Public Company Employee Plan.

(h) No Public Company Employee Plan provides, and neither Public Company nor any of its ERISA Affiliates has any obligation to provide, any gross-up, indemnification or reimbursement of any Taxes, including, without limitation, Taxes incurred under Section 4999 or 409A of the Code.

(i) Each Public Company Employee Plan that is a "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code) complies and has complied, in all material respects, in form and operation with Section 409A of the Code and all IRS regulations and other guidance thereunder. No event has occurred that would be treated by Section 409A(b) of the Code as a transfer of property for purposes of Section 83 of the Code.

(j) No Public Company Employee Plan is subject to any Law of a foreign jurisdiction outside of the United States.

4.18 Employees.

(a) To the knowledge of Public Company, as of the date of this Agreement, no employee of Public Company or any of its Subsidiaries is in material violation of any material term of any non-competition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by Public Company or any of its Subsidiaries because of the nature of the business currently conducted by Public Company. To the knowledge of Public Company, as of the date of this Agreement, no Public Company Key Employee or group of Public Company Key Employees has any plans to terminate employment with Public Company or any of its Subsidiaries.

(b) Neither Public Company nor any of its Subsidiaries is a party to or otherwise bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization, nor, to the knowledge of Public Company, have there been any labor organizing activities with respect to any employees of Public Company or any of its Subsidiaries. During the three (3) years prior to the date hereof, neither Public Company nor any of its Subsidiaries is or has been the subject of any proceeding asserting that it has committed an unfair labor practice or seeking to compel it to bargain with any labor union or labor organization, nor is there or has there been pending or, to the knowledge of Public Company, threatened, any labor strike, dispute, walkout, work stoppage, slow-down or lockout or other labor dispute involving Public Company or any of its Subsidiaries.

(c) Public Company and each of its Subsidiaries is and has been for the three (3) years prior to the date hereof in compliance in all material respects with all applicable Laws related to employment (including verification of employment eligibility), employment practices (including without limitation Laws related to discrimination, harassment, and retaliation), terms and conditions of employment and wages and hours (including, without limitation, classification of employees) with respect to any employee (as defined by, or determined in accordance with, applicable Laws). To the knowledge of Public Company, all Workers of Public Company and each of its Subsidiaries are lawfully authorized to work in the applicable jurisdiction.

(d) Neither Public Company nor any of its Subsidiaries has received written notice of any charge or complaint pending before the Equal Employment Opportunity Commission or other Governmental Entity alleging unlawful discrimination, harassment, retaliation or any other violation of or non-compliance with applicable Law relating to the employment, treatment, or termination of any employees of Public Company or any of its Subsidiaries, nor, to the knowledge of Public Company, has any such charge been threatened during the three (3) years prior to the date hereof. No current or former employee of Public Company or any of its Subsidiaries has, pursuant to internal complaint procedures, made a written complaint of discrimination, retaliation or harassment against any Public Company Key Employee, member of Public Company's leadership team or other supervisory employee, nor, to Public Company's knowledge, has an oral complaint of any of the foregoing been made during the three (3) years prior to the date hereof.

(e) Neither Public Company nor any of its Subsidiaries has caused a plant closing as defined in the WARN Act affecting any site of employment or one or more operating units within any site of employment, or a mass layoff as defined in the WARN Act, nor has Public Company or any of its Subsidiaries been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local Law.

4.19 Opinion of Financial Advisor. The Public Company Board has received an opinion of Oppenheimer & Co. Inc. (the "Public Company Financial Advisor") to the effect that as of the date of such opinion, and subject to the assumptions, qualifications, limitations and other matters set forth therein and such other factors deemed relevant by the Public Company Financial Advisor, the aggregate consideration to be paid by Public Company pursuant to this Agreement is fair, from a financial point of view, to Public Company. It is agreed and understood that such opinion is furnished solely for the use of the Public Company Board and may not be relied upon by Merger Partner or any other party.

4.20 Valid Issuance. The Public Company Common Stock to be issued in the Share Issuances will, when issued in accordance with the provisions of this Agreement, be validly issued, fully paid and nonassessable.

4.21 "Combinations with Interested Stockholders" Statutes. Assuming the accuracy of the representations and warranties of Merger Partner in Section 3.23, the Public Company Board has taken all actions so that (i) restrictions applicable to business combinations contained in Section 203 of the DGCL, and (ii) the restrictions contained in NRS 78.411 through 78.444, inclusive, applicable to a "combination" (as defined in NRS 78.416), and in NRS 78.378 through 78.3793, inclusive, applicable to any "acquisition" (as defined in NRS 78.3783), in each case, shall not apply to the execution, delivery or performance of this Agreement or the consummation of the Mergers or the other transactions contemplated by this Agreement.

4.22 Brokers; Fees and Expenses. Except as set forth on Section 4.22 of the Public Company Disclosure Schedule (which shall include the Public Company Financial Advisor), no agent, broker, investment banker, financial advisor or other firm or Person is or shall be entitled, as a result of any action, agreement or commitment of Public Company or any of its Subsidiaries, to any broker's, finder's, financial advisor's or other similar fee or commission in connection with any of the transactions contemplated by this Agreement.

4.23 Operations of Merger Subs. Each of Merger Sub and Merger Sub II was formed solely for the purpose of engaging in the transactions contemplated by this Agreement, has engaged in no other business activities and has conducted its operations only as contemplated by this Agreement. Neither Merger Sub nor Merger Sub II has any assets or liabilities other than those incident to its formation, the execution of this Agreement and the completion of the transactions hereunder.

4.24 Certain Business Relationships with Affiliates. Except as otherwise set forth on Section 4.24 of the Public Company Disclosure Schedule, neither any Affiliate of Public Company (other than a wholly owned Subsidiary of Public Company) nor any of its or their current equityholders, directors, officers, or employees (a) owns any material property or right, tangible or intangible, which is used in the business of Public Company or any of its Subsidiaries, (b) has any material claim or cause of action against Public Company or any of its Subsidiaries, (c) owes any material money to, or is owed any material money by, Public Company or any of its Subsidiaries or (d) has or has had any direct or indirect interest of any kind in, or controls or has controlled, or is an officer, manager, director, equityholder, member or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, as applicable, (i) any Person that is a client, customer, supplier, vendor, distributor, lessor, lessee, debtor, creditor or competitor of Public Company or any of its Subsidiaries or (ii) any property, asset or right that is owned, held or used by Public Company or any of its Subsidiaries. Section 4.24 of the Public Company Disclosure Schedule describes any material Contracts between Public Company or any of its Subsidiaries, on the one hand, and any Affiliate thereof (other than a wholly owned Subsidiary of Public Company) or any officer, manager, director, equityholder or employee of such Affiliate, on the other hand, which were entered into or have been in effect at any time since January 1, 2025, other than any employment or service Contracts, invention assignment agreements and other Contracts relating to or entered into in connection with any employment or service, including any Contracts relating to stock purchases and awards, stock options and other equity or equity-based incentive arrangements, in each case relating to compensation and entered into in the Ordinary Course of Business.

4.25 Controls and Procedures, Certifications and Other Matters.

(a) Public Company and each of its Subsidiaries maintain accurate books and records reflecting their assets and liabilities and maintain proper and adequate internal control over financial reporting designed to provide assurance that (i) transactions are executed with management's authorization, (ii) transactions are recorded as necessary to permit preparation of the financial statements of Public Company and to maintain accountability for Public Company's and each of its Subsidiaries' consolidated assets, (iii) access to assets of Public Company and its Subsidiaries is permitted only in accordance with management's authorization, (iv) the reporting of assets of Public Company and its Subsidiaries is compared with existing assets at regular intervals and (v) accounts, notes and other receivables and inventory were recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis.

(b) Public Company maintains disclosure controls and procedures required by Rules 13a-15 or 15d-15 under the Exchange Act, and such controls and procedures are reasonably designed to ensure that all material information concerning Public Company and its Subsidiaries is made known on a timely basis to the individuals responsible for the preparation of Public Company's filings with the SEC and other public disclosure documents.

(c) Except as otherwise set forth on Section 4.25(c) of the Public Company Disclosure Schedule, neither Public Company nor any of its Subsidiaries has, since Public Company became subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, extended or maintained credit, arranged for the extension of credit, modified or renewed an extension of credit, in the form of a personal loan or otherwise, to or for any director or executive officer of Public Company or any of its Subsidiaries. Section 4.25(c) of the Public Company Disclosure Schedule identifies any loan or extension of credit maintained by Public Company or any Subsidiary to which the second sentence of Section 13(k)(1) of the Exchange Act applies.

4.26 IT; Privacy and Data Protection.

(a) The information technology systems, networks, software, hardware, databases, websites, and related infrastructure (collectively, the "Public Company IT Systems") owned, licensed, leased, or otherwise used by Public Company and its Subsidiaries perform in all material respects in accordance with their applicable documentation and specifications. The Public Company IT Systems are sufficient in all material respects for the current operation of Public Company and each of its Subsidiaries as presently conducted. To the knowledge of Public Company, the Public Company IT Systems do not contain any material bugs, defects, errors, viruses, Trojan horses, or other corruptants that would reasonably be expected to result in a material disruption to, or material degradation of, the performance or functionality of such Public Company IT Systems.

(b) Public Company and its Subsidiaries have complied at all times, and currently comply, in each case, in all material respects, with any applicable data protection and privacy Law with respect to their businesses, including, as applicable, with respect to (i) applicable requirements relating to notification and/or registration of processing of personal data with any applicable national data protection regulator, (ii) requests from data subjects under applicable data protection and privacy Laws, and (iii) where necessary, the obtaining of consent to the processing of personal data and/or direct marketing activity. Public Company and each of its Subsidiaries have all material rights necessary to process all personal data used in the business of Public Company or such Subsidiary, as applicable. Neither Public Company nor any of its Subsidiaries has received any written notice or complaint from any individual, third party and/or regulatory authority (x) alleging non-compliance by Public Company or any of its Subsidiaries with any applicable data protection and privacy Law (including any prohibition or restriction on the transfer of data to any jurisdiction) or (y) claiming compensation for or an injunction for non-compliance with any applicable data protection and privacy Law.

(c) Public Company and each of its Subsidiaries have established and maintain commercially reasonable technical, physical and organizational controls, policies, procedures, safeguards, measures and security systems, plans and technologies in material compliance with requirements under applicable privacy and data protection Laws. During the three (3) years prior to the date hereof, no material breach or material security incident in relation to Public Company's or any of its Subsidiaries' personal data and/or proprietary data has occurred that would require Public Company or any of its Subsidiaries to notify individuals or Governmental Entities, and there has been no unauthorized or illegal processing of, or accidental or unlawful destruction, loss or alteration of, any of Public Company's or its Subsidiaries' personal data and/or proprietary data.

4.27 No Shell Company Status. Public Company is not, and has never been, a "shell company" as such term is defined in Rule 405 under the Securities Act.

4.28 No Other Representations or Warranties. Each of Public Company, Merger Sub and Merger Sub II hereby acknowledges and agrees that, except for the representations and warranties contained in Article III of this Agreement, none of Merger Partner or any other Person on behalf of Merger Partner makes any express or implied representation or warranty with respect to Merger Partner or its financial condition, business, results of operations, properties, assets, liabilities, or prospects or otherwise or with respect to any other statements made or information provided to Public Company, Merger Sub, Merger Sub II or any of their Affiliates in connection with the transactions contemplated hereby, and (subject to the express representations and warranties of Merger Partner set forth in Article III (in each case as qualified and limited by the Merger Partner Disclosure Schedule)) none of Public Company, Merger Sub, Merger Sub II or any of their respective Affiliates, stockholders, directors, officers, employees, agents, Representatives or advisors, or any other Person, has relied on any representations, warranties, statements, or information (including the accuracy or completeness thereof).

ARTICLE V.
CONDUCT OF BUSINESS

5.1 Covenants of Merger Partner. Except as set forth in Section 5.1 of the Merger Partner Disclosure Schedule, as expressly provided herein, or as consented to in writing by Public Company (which consent shall not be unreasonably withheld, conditioned or delayed), or to the extent necessary to comply with any applicable Law, or as required in connection with the Concurrent Financing or the Bridge Financing, from and after the date of this Agreement until the earlier of the termination of this Agreement in accordance with its terms and the Initial Effective Time, Merger Partner shall use commercially reasonable efforts to act and carry on its business in the Ordinary Course of Business and to preserve intact the present business organizations and goodwill of the business and the present relationships of the business with material customers and suppliers. Without limiting the generality of the foregoing, except as set forth in Section 5.1 of the Merger Partner Disclosure Schedule, or as expressly provided herein, or to the extent necessary to comply with any applicable Law, or as required in connection with the Concurrent Financing or the Bridge Financing, from and after the date of this Agreement until the earlier of (i) the termination of this Agreement in accordance with its terms or (ii) the Initial Effective Time, Merger Partner shall not, directly or indirectly, do any of the following without the prior written consent of Public Company (which consent shall not be unreasonably withheld, conditioned or delayed):

(a) (i) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, securities or other property) in respect of, any of its capital stock; (ii) split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or any of its other securities, other than issuances upon the conversion of outstanding convertible securities of Merger Partner; or (iii) purchase, redeem or otherwise acquire any shares of its capital stock or any other of its securities or any rights, warrants or options to acquire any such shares or other securities;

(b) issue, deliver, sell, grant, pledge or otherwise dispose of or encumber any shares of its capital stock, any other voting securities or any securities convertible into or exchangeable for, or any rights, warrants or options to acquire, any such shares, voting securities or convertible or exchangeable securities;

(c) amend its Organizational Documents or effect or be a party to any merger, consolidation, share exchange, business combination, liquidation, dissolution, reorganization, statutory conversion, recapitalization, reclassification of shares, stock split or reverse stock split or form any new Subsidiary or acquire any equity interest or other interest in any other Person;

(d) acquire (i) by merging or consolidating with, or by purchasing all or a substantial portion of the assets or any stock of, or by any other manner, any business or any corporation, partnership, joint venture, limited liability company, association or other business organization or division thereof or (ii) any assets that are material, individually or in the aggregate, to Merger Partner and the Merger Partner Subsidiary, taken as a whole;

(e) sell, lease, license, pledge, or otherwise dispose of or encumber any properties or assets material to Merger Partner;

(f) enter into any material transaction or other transaction or Contract which requires future payments by Merger Partner of more than $50,000 in the aggregate;

(g) transfer, sell, lease, exclusively license or otherwise dispose of, any material Merger Partner Intellectual Property;

(h) initiate, threaten, compromise or settle any litigation or arbitration proceeding (other than any litigation to enforce its rights under this Agreement), other than a Permitted Settlement;

(i) (i) incur or suffer to exist any Indebtedness or guarantee any such Indebtedness of another Person in excess of $50,000.00 in the aggregate, (ii) issue, sell, or amend any debt securities or warrants or other rights to acquire any debt securities of Merger Partner, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person, or enter into any arrangement having the economic effect of any of the foregoing, or (iii) make any loans, advances or capital contributions to, or investment in, any other Person;

(j) create or otherwise incur any encumbrance on any material asset of Merger Partner or any of its Subsidiaries, other than Permitted Liens;

(k) incur, pay or otherwise agree to bear any Transaction Expenses in excess of the threshold set forth in Section 5.1(k) of the Merger Partner Disclosure Schedule;

(l) forgive any loans to any Person, including its employees, officers, directors or Affiliates;

(m) except as required by the terms of any Merger Partner Employee Plan as in effect on the date of this Agreement, (i) enter into, adopt, amend or terminate any Merger Partner Employee Plan (or any other employee benefit or compensation plan, program, policy, agreement or arrangement that would have constituted a Merger Partner Employee Plan had it been in effect on the date of this Agreement) or any collective bargaining agreement, (ii) increase or alter the compensation (including any compensation opportunities) or benefits of, or pay or grant any bonus or bonus opportunity or severance, change in control, retention, transaction or other similar compensation or benefits, to, any director, officer, employee or consultant, other than (x) annual merit-based increases in base salary or wage rate of employees who are not Merger Partner Key Employees made in the Ordinary Course of Business and that do not in the aggregate exceed five percent (5%) of the aggregate cost of annual base salaries and annualized wage rate in effect as of the date hereof, and (y) annual modifications to health and welfare plans and arrangements in the Ordinary Course of Business that do not materially increase the costs of such arrangements or result in the provision of any material benefit that is not provided as of the date hereof, (iii) amend or accelerate the payment, right to payment or vesting of any compensation or benefits, including any outstanding equity or equity-based incentive awards, (iv) pay any benefit not provided for as of the date of this Agreement under any Merger Partner Employee Plan, (v) grant any awards under any Merger Partner Employee Plan (or under any other employee benefit or compensation plan, program, policy, agreement or arrangement that would have constituted a Merger Partner Employee Plan had it been in effect on the date of this Agreement), (vi) take any action other than in the Ordinary Course of Business to fund or in any other way secure the payment of compensation or benefits under any Merger Partner Employee Plan (or under any other employee benefit or compensation plan, program, policy, agreement or arrangement that would have constituted a Merger Partner Employee Plan had it been in effect on the date of this Agreement), (vii) hire, promote, engage or terminate (other than for cause) any employee or other individual service provider, other than hires, promotions and terminations of employees in the Ordinary Course of Business in a position with an annual base salary or annualized base wage rate of less than $100,000, or (viii) waive or release any noncompetition, non-solicitation, confidentiality, assignment of Intellectual Property or other restrictive covenant obligation of any current or former employee or other individual service provider of Merger Partner or the Merger Partner Subsidiary;

(n) enter into any agreement to purchase or sell any interest in real property, grant any security interest in any real property, enter into any lease, sublease, license or other occupancy agreement with respect to any real property or alter, amend or modify any agreement that terminated any Merger Partner Lease;

(o) make (i) any capital expenditures or other expenditures with respect to property, plant or equipment or (ii) any other expenditures in excess of $50,000.00 per expenditure, except (A) payroll expenditures paid in the Ordinary Course of Business to Merger Partner Key Employees, or (B) as required by Contracts set forth in Section 3.11(a) of the Merger Partner Disclosure Schedule;

(p) make any changes in accounting methods, principles or practices, except insofar as may have been required by a change in GAAP or, except as so required, change any assumption underlying, or method of calculating, any bad debt, contingency or other reserve;

(q) (i) modify or amend in any material respect, or terminate, any material contract or agreement to which Merger Partner or the Merger Partner Subsidiary is party, or (ii) knowingly waive, release or assign any material rights or claims (including any write-off or other compromise of any accounts receivable of Merger Partner or the Merger Partner Subsidiary);

(r) delay or fail to pay accounts payable and other obligations when due;

(s) (i) enter into any contract or agreement relating to the rendering of services or the distribution, sale or marketing by third parties of its products or products licensed to Merger Partner or the Merger Partner Subsidiary or (ii) license any Intellectual Property rights to or from any third party;

(t) open or close any facility or office;

(u) make (to the extent inconsistent with past practice), change or revoke any material Tax election, change any material method of Tax accounting, enter into any closing agreement in respect of material Taxes, waive or extend any statute of limitations with respect to material Taxes (other than any automatic extension granted by operation of Law), settle or compromise any material Tax Liability, claim or assessment, knowingly surrender any right to claim a refund of material Taxes, or amend any material Tax Return; or

(v) authorize any of, or commit or agree, in writing or otherwise, to take any of, the foregoing actions or any action that would reasonably be expected to, individually or in the aggregate, (i) make any representation or warranty of Merger Partner in this Agreement untrue or incorrect, or (ii) impair, delay or prevent the satisfaction of any conditions in Article VII hereof.

5.2 Covenants of Public Company. Except as set forth in Section 5.2 of the Public Company Disclosure Schedule or as expressly provided herein or as consented to in writing by Merger Partner (which consent shall not be unreasonably withheld, conditioned or delayed) or to the extent necessary to comply with any applicable Laws, or as required in connection with the Concurrent Financing, from and after the date of this Agreement until the earlier of the termination of this Agreement in accordance with its terms and the Initial Effective Time, Public Company shall, and shall cause each of its Subsidiaries to, use commercially reasonable efforts to act and carry on its business in the Ordinary Course of Business and to preserve intact the present business organizations and goodwill of the business and the present relationships of the business with material customers and suppliers. Without limiting the generality of the foregoing, except as set forth in Section 5.2 of the Public Company Disclosure Schedule, as expressly provided herein, as required in connection with the Concurrent Financing, or to the extent necessary to comply with any applicable Law, from and after the date of this Agreement until the earlier of (i) the termination of this Agreement in accordance with its terms or (ii) the Initial Effective Time, Public Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, do any of the following without the prior written consent of Merger Partner (which consent shall not be unreasonably withheld, conditioned or delayed):

(a) (i) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, securities or other property) in respect of, any of its capital stock; (ii) split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or any of its other securities, other than as set forth in Section 5.2(a) of the Public Company Disclosure Schedule (which shall describe each such anticipated issuance, including the type of security, the number of shares or units, the consideration therefor, and the intended timing); or (iii) purchase, redeem or otherwise acquire any shares of its capital stock (other than the withholding of shares to satisfy Tax withholding obligations upon the exercise, vesting or settlement of Public Company Equity Awards in accordance with their terms and, as applicable, the Public Company Stock Plans as in effect on the date hereof) or any other of its securities or any rights, warrants or options to acquire any such shares or other securities;

(b) issue, deliver, sell, grant, pledge or otherwise dispose of or encumber any shares of its capital stock, any other voting securities or any securities convertible into or exchangeable for, or any rights, warrants or options to acquire, any such shares, voting securities or convertible or exchangeable securities, in each case other than (x) the issuance of shares of Public Company Series B Preferred Stock or Public Company Common Stock or warrants to acquire shares of Public Company Series B Preferred Stock or Public Company Common Stock pursuant to the Concurrent Financing, (y) upon the exercise of Public Company Stock Options or Public Company Warrants, the vesting or settlement of Public Company RSU Awards or Public Company PSU Awards, or conversion of Public Company Preferred Stock, in each case outstanding on the date of this Agreement in accordance with their present terms (including cashless exercises), or (z) issuances of awards or shares under the Public Company Stock Plans in the Ordinary Course of Business;

(c) amend its Organizational Documents or effect or be a party to any merger, consolidation, share exchange, business combination, liquidation, dissolution, reorganization, statutory conversion, recapitalization, reclassification of shares, stock split or reverse stock split or form any new Subsidiary or acquire any equity interest or other interest in any other Person;

(d) acquire (i) by merging or consolidating with, or by purchasing all or a substantial portion of the assets or any stock of, or by any other manner, any business or any corporation, partnership, joint venture, limited liability company, association or other business organization or division thereof, or (ii) any assets that are material, individually or in the aggregate, to Public Company and its Subsidiaries, taken as a whole;

(e) sell, lease, license, pledge, or otherwise dispose of or encumber any properties or assets material to Public Company or any of its Subsidiaries;

(f) transfer, sell, lease, exclusively license, or otherwise dispose of any material Public Company Intellectual Property; or

(g) authorize any of, or commit or agree, in writing or otherwise, to take any of, the foregoing actions or any action that would reasonably be expected to, individually or in the aggregate, make any representation or warranty of Public Company in this Agreement untrue or incorrect in any material respect, or would materially impair, delay or prevent the satisfaction of any conditions in Article VII hereof.

5.3 Confidentiality. The parties acknowledge that Public Company and Merger Partner have previously executed a letter agreement, dated as of July 24, 2026 (the "Confidentiality Agreement"), which Confidentiality Agreement shall continue in full force and effect in accordance with its terms, except as expressly modified by this Agreement.

ARTICLE VI.
ADDITIONAL AGREEMENTS

6.1 No Solicitation.

(a) No Solicitation or Negotiation. Except as set forth in this Section 6.1, until the earlier to occur of (i) the termination of this Agreement pursuant to Article VIII or (ii) the Initial Effective Time, each of Merger Partner, Public Company and their respective Subsidiaries shall not, and each of Merger Partner and Public Company shall cause their respective directors, officers, employees and consultants not to, and shall instruct their respective attorneys and financial advisors ("Representatives") not to, directly or indirectly:

(i) solicit, seek, encourage, induce or initiate or knowingly take any action to facilitate or encourage any offers, inquiries or the making of any proposal or offer that constitutes, or would reasonably be expected to lead to, any Acquisition Proposal or Acquisition Inquiry;

(ii) enter into, continue or otherwise participate or engage in any discussions or negotiations regarding any Acquisition Proposal or Acquisition Inquiry, or furnish to any Person any non-public information or afford any Person other than Public Company or Merger Partner, as applicable, access to such party's property, books or records (except pursuant to a request by a Governmental Entity) in connection with any offers, inquiries or the making of any proposal or offer that constitutes, or would reasonably be expected to lead to, any Acquisition Proposal;

(iii) take any action to make the provisions of any "fair price", "business combination" or "control share acquisition" statute or other similar statute or regulation inapplicable to any transactions contemplated by an Acquisition Proposal; or

(iv) publicly propose to do any of the foregoing described in clauses (i) through (iii).

Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, subject to compliance with Section 6.1(c), prior to the Specified Time, each of Public Company and Merger Partner, and their respective Representatives, may (A) furnish non-public information with respect to Public Company and its Subsidiaries or Merger Partner, as the case may be, to any Qualified Person (and the Representatives of such Qualified Person), or (B) engage in discussions or negotiations (including solicitation of revised Acquisition Proposals) with any Qualified Person (and the Representatives of such Qualified Person) regarding any bona fide, unsolicited written Acquisition Proposal which such party's board of directors determines in good faith, after consultation with such party's financial advisors and outside legal counsel, constitutes, or is reasonably likely to result in, a Superior Proposal (and is not withdrawn); provided, (x) that either Merger Partner or Public Company, as the case may be, receives from the Qualified Person an executed confidentiality agreement on terms not less restrictive than those contained in the Confidentiality Agreement and, if entered into after the date of this Agreement, containing additional provisions that expressly permit such party to comply with the terms of this Section 6.1 (a copy of which shall be provided to the other party), (y) that the party seeking to make use of this proviso has not otherwise breached this Section 6.1 with respect to such Acquisition Proposal or the Person making such Acquisition Proposal, and (z) the Merger Partner Board or Public Company Board, as the case may be, has determined in good faith (after consultation with outside legal counsel) that the failure to take such actions would be inconsistent with its fiduciary duties under applicable Law. It is understood and agreed that any violation of the restrictions in this Section 6.1 (or action that, if taken by Public Company or Merger Partner, as applicable, would constitute such a violation) by any director, officer, attorney, or financial advisor of Public Company or Merger Partner shall be deemed to be a breach of this Section 6.1 by Public Company or Merger Partner, as the case may be.

(b) No Change in Recommendation or Alternative Acquisition Agreement. Prior to the Initial Effective Time:

(i) (A) The Merger Partner Board (and any committee thereof) shall not, except as set forth in this Section 6.1, (1) withhold, withdraw or modify, or publicly propose to withhold, withdraw or modify, the approval or recommendation by the Merger Partner Board with respect to the Merger Partner Stockholder Approvals, (2) fail to recommend against acceptance of a tender offer within ten (10) Business Days after commencement, or (3) propose publicly to approve, endorse, adopt or recommend, or approve, endorse, adopt, or recommend any Acquisition Proposal (each, a "Merger Partner Board Recommendation Change") and (B) the Public Company Board (and any committee thereof) shall not, except as set forth in this Section 6.1, (1) fail to include its recommendation of the approval of the Requisite Public Company Stockholder Approvals, (2) withhold, withdraw or modify, or publicly propose to withhold, withdraw or modify, the approval or recommendation by the Public Company Board with respect to the Requisite Public Company Stockholder Approvals, (3) if, after the receipt by Public Company of an Acquisition Proposal, Merger Partner requests in writing that the Public Company Board reconfirm its recommendation of the Requisite Public Company Stockholder Approvals, fail to do so within ten (10) Business Days after its receipt of Merger Partner's request, (4) fail to recommend against acceptance of a tender offer within ten (10) Business Days after commencement or (5) approve, endorse, adopt or recommend, or propose publicly to approve, endorse, adopt or recommend any Acquisition Proposal (each a "Public Company Board Recommendation Change");

(ii) each of Public Company and Merger Partner shall not enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement or similar agreement (an "Alternative Acquisition Agreement") providing for the consummation of a transaction contemplated by any Acquisition Proposal (other than a confidentiality agreement referred to in Section 6.1(a) entered into in the circumstances referred to in Section 6.1(a)); and

(iii) each of the Public Company Board and the Merger Partner Board, and each committee thereof, shall not, except as set forth in this Section 6.1, adopt, approve or recommend, or publicly propose to adopt, approve or recommend, any Acquisition Proposal.

Notwithstanding the foregoing or anything to the contrary set forth in this Agreement (including the provisions of this Section 6.1), at any time prior to the Specified Time, the Public Company Board or the Merger Partner Board, as the case may be, may effect a Public Company Board Recommendation Change or Merger Partner Board Recommendation Change, as the case may be, with respect to a Superior Proposal, if: (i) such board of directors shall have determined in good faith (after consultation with outside legal counsel) that the failure to effect such Public Company Board Recommendation Change or Merger Partner Board Recommendation Change, as applicable, would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law; (ii) such party has provided at least four (4) Business Days' prior written notice to the other party that it intends to effect a Public Company Board Recommendation Change or Merger Partner Board Recommendation Change, as the case may be, and written copies of any relevant proposed transaction agreements with any party making a potential Superior Proposal (including the identity of the Person making such Superior Proposal) (a "Recommendation Change Notice") (it being understood that the Recommendation Change Notice shall not constitute a Public Company Board Recommendation Change or Merger Partner Board Recommendation Change for purposes of this Agreement); (iii) such party has complied in all material respects with the requirements of this Section 6.1 in connection with any potential Superior Proposal; (iv) such party has, and has caused its financial advisors and outside legal counsel to, during the four (4) Business Day period referred to in clause (ii) above, negotiate with the other party in good faith to make such adjustments to the terms and conditions of this Agreement so that such Acquisition Proposal ceases to constitute a Superior Proposal (to the extent the other party desires to negotiate); and (v) if the other party shall have delivered to such party a written, binding and irrevocable offer to alter the terms or conditions of this Agreement during the four (4) Business Day period referred to in clause (ii) above, such party's board of directors shall have determined in good faith (after consultation with outside legal counsel), after considering the terms of such offer by the other party, that the failure to effect a Public Company Board Recommendation Change or Merger Partner Board Recommendation Change, as the case may be, would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law. In the event of any material amendment to any Superior Proposal (including any revision in the amount, form or mix of consideration such party's stockholders would receive as a result of such potential Superior Proposal), such party shall be required to provide the other party with notice of such material amendment and there shall be a new two (2) Business Day period following such notification during which the parties shall comply again with the requirements of this Section 6.1(b) and the board of directors of such party shall not make a Public Company Board Recommendation Change or Merger Partner Board Recommendation Change, as applicable, prior to the end of any such period as so extended.

(c) Notices of Proposals. Each party will as promptly as reasonably practicable (and in any event within twenty-four (24) hours after receipt) (i) notify the other party of its receipt of any Acquisition Proposal and (ii) provide to the other party a copy of such Acquisition Proposal (if written), or a summary of the material terms and conditions of such Acquisition Proposal (if oral), including the identity of the Person making such Acquisition Proposal, and copies of all written communications and materials from such Person with respect to such actual or potential Acquisition Proposal. Such party in receipt of an Acquisition Proposal shall notify the other party, in writing, of its first decision of its board of directors as to whether to consider any Acquisition Proposal or to enter into discussions or negotiations concerning any Acquisition Proposal or to provide non-public information with respect to such party to any Person, which notice shall be given as promptly as practicable after such determination was reached (and in any event no later than twenty-four (24) hours after such determination was reached). Such party in receipt of an Acquisition Proposal will (A) provide the other party with written notice setting forth such information as is reasonably necessary to keep such other party reasonably informed of the material terms of any such Acquisition Proposal and of any material amendments or modifications thereto made by the Person making an Acquisition Proposal, and (B) at least two (2) Business Days prior to the provision of any material non-public information of such party to any such Person, provide such information to the other party (including by posting such information to an electronic data room), to the extent such information has not previously been made available to the other party.

(d) Certain Permitted Disclosure. Nothing contained in this Agreement shall prohibit Merger Partner or Public Company or their respective boards of directors from complying with Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act; *provided*, *however*, that any disclosure made by Merger Partner or Public Company or their respective boards of directors pursuant to Rules 14d-9 and 14e-2(a) shall be limited to a statement that Merger Partner or Public Company, as applicable, is unable to take a position with respect to the bidder's tender offer unless the applicable board of directors determines, after consultation with its outside legal counsel, that such statement would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law; provided, further, that any such disclosures (other than a "stop, look and listen" communication or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) shall be deemed to be a Merger Partner Board Recommendation Change or Public Company Board Recommendation Change, as applicable, unless such communication expressly reaffirms its recommendation for the Mergers and the other transactions contemplated hereby in such communication.

(e) Cessation of Ongoing Discussions. Each of Public Company and Merger Partner shall, and shall direct its Representatives to, cease immediately all discussions and negotiations that commenced prior to the date of this Agreement regarding any proposal that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal; *provided*, *however*, that the foregoing shall not in any way limit or modify the rights of any party hereto under the other provisions of this Section 6.1. Public Company and Merger Partner will each promptly revoke or withdraw access of any Person (other than Public Company, Merger Partner and their respective Representatives) to any data room (virtual or actual) containing any non-public information with respect to Public Company or Merger Partner, as applicable, that was established or shared in connection with any potential Acquisition Proposal and request from each third party (other than Public Company, Merger Partner and their Representatives) the prompt return or destruction of all non-public information with respect to Public Company or Merger Partner, as applicable, previously provided to such Person.

6.2 NYSE American Listing. Public Company shall use its commercially reasonable efforts, and shall take all reasonably necessary actions, to continue the listing of Public Company Common Stock on the NYSE American during the term of this Agreement (through and until the Initial Effective Time) and to cause the shares of Public Company Common Stock being issued in connection with the First Merger (including the Merger Partner Merger Shares, the Contingent Shares and any Adjustment Contingent Shares) to be approved for listing (subject to notice of issuance) on the NYSE American at or prior to the Initial Effective Time (or, with respect to the Contingent Shares and any Adjustment Contingent Shares, at or prior to the issuance of such Contingent Shares or any Adjustment Contingent Shares), including by filing the NYSE American Listing Application or such additional listing applications as may be required, including with respect to the Contingent Shares and any Adjustment Contingent Shares. Merger Partner will cooperate with Public Company to cause the NYSE American Listing Application with respect to the Merger Partner Merger Shares to be conditionally approved prior to the Initial Effective Time and shall promptly furnish to Public Company all information concerning Merger Partner and its officers, directors, and equityholders and such other matters, in each case, that may be required or reasonably requested in connection with any action contemplated by this Section 6.2.

6.3 Access to Information. Each of Public Company and Merger Partner shall (and Public Company shall cause its Subsidiaries to) afford to the other party's officers, employees, accountants, counsel and other Representatives, reasonable access, during normal business hours during the period prior to the Initial Effective Time, to all its properties, books, contracts, commitments, personnel and records and, during such period, each of Public Company and Merger Partner shall (and Public Company shall cause its Subsidiaries to) furnish promptly to the other party all information concerning its business, properties, assets and personnel as the other party may reasonably request in furtherance of the consummation of the Mergers, the Concurrent Financing, the Bridge Financing or the other transactions contemplated by this Agreement; *provided*, *however*, that a party may restrict the foregoing access to the extent that (a) any applicable Law requires such restriction, (b) such access would give rise to a risk of waiving any attorney-client privilege, work product doctrine or other applicable privilege, or (c) such access would be in breach of any confidentiality obligation or similar obligation. Each of Public Company and Merger Partner will (and Public Company will cause its Subsidiaries to) hold any such information which is nonpublic in confidence in accordance with the Confidentiality Agreement. No information or knowledge obtained in any investigation pursuant to this Section 6.3 or otherwise shall affect or be deemed to modify any representation or warranty contained in this Agreement or the conditions to the obligations of the parties to consummate the Mergers, and neither Public Company nor Merger Partner shall be deemed to make any representation or warranty except as expressly set forth in this Agreement. Any information obtained pursuant to the access contemplated by this Section 6.3 shall be subject to the Confidentiality Agreement, and each of Public Company and Merger Partner shall not, and shall cause their respective Representatives not to, use any information obtained pursuant to this Section 6.3 for any purpose unrelated to the consummation of the transactions contemplated by this Agreement. Any access to any facilities of Merger Partner, Public Company, or any of their Subsidiaries, shall be subject to the reasonable security measures and insurance requirements of Merger Partner, Public Company, or any of their Subsidiaries, as applicable, and shall not include the right to perform any "invasive" testing or soil, air or groundwater sampling, including, without limitation, any Phase I or Phase II environmental assessments. Without limiting the generality of the foregoing, from the date of this Agreement until the Second Effective Time, each of Public Company and Merger Partner shall promptly provide the other party with copies of any material notice, report or other document received from any Governmental Entity in connection with the Mergers or any of the transactions contemplated by this Agreement.

6.4 Public Company Stockholder Approval; Form S-4 and Information Statement; Merger Partner Stockholder Approval; Merger Partner Information Statement.

(a) *Public Company Stockholder Approval*. Immediately following the execution of this Agreement, in lieu of calling a meeting of the stockholders of Public Company, Public Company shall solicit the written consent of the stockholders of Public Company sufficient to obtain the Requisite Public Company Stockholder Approvals (the "Public Company Written Consent"). Promptly following receipt of the Public Company Written Consent, duly executed by the requisite Public Company stockholders, and by no later than one (1) Business Day after the execution and delivery of this Agreement, Public Company shall deliver to Merger Partner a copy of the Public Company Written Consent. Public Company's obligation to obtain the Requisite Public Company Stockholder Approvals by the Public Company Written Consent in accordance with this Section 6.4(a) shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission of any Acquisition Proposal. In connection with the Public Company Written Consent, (i) Public Company shall take all actions necessary or advisable to comply, and shall comply in all respects, with all applicable Laws and Public Company's Organizational Documents and (ii) Public Company, in its capacity as the sole stockholder of Merger Sub and sole member of Merger Sub II, shall approve the Mergers.

(b) *Form S-4 and Information Statement*. As promptly as practicable after the execution of this Agreement, Public Company shall, in consultation with Merger Partner and its counsel as provided below, prepare and file with the SEC a registration statement on Form S-4 to register the shares of Public Company Common Stock to be issued pursuant to the Share Issuances (the "Form S-4"), which Form S-4 shall also include a preliminary Information Statement. Public Company shall use its reasonable best efforts to have the Form S-4 declared effective under the Securities Act as promptly as practicable after such filing date and shall also use its reasonable best efforts to keep the Form S-4 effective for so long as is necessary to consummate the transactions contemplated hereby. As promptly as reasonably practicable after the Form S-4 has been declared effective by the SEC, Public Company shall file with the SEC the Information Statement in definitive form as contemplated by Rule 14c-2 promulgated under the Exchange Act, and mail a copy of the Information Statement to Public Company's stockholders of record in accordance with applicable Law. In connection with the Public Company Written Consent, the Form S-4 and the Information Statement, Public Company shall take all actions necessary to comply, and shall comply in all material respects, with applicable Law, the bylaws of Public Company, the Securities Act and the Exchange Act, including Regulation 14C and Schedule 14C promulgated thereunder, as applicable. Public Company shall cause the Form S-4 and the definitive Information Statement (or any amendment or supplement thereto), at the time filed with the SEC and, in the case of the definitive Information Statement, at the time it is mailed to the stockholders of Public Company, not to (i) contain any untrue statement of a material fact or (ii) omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. Public Company and Merger Partner shall cooperate with one another (i) in connection with the preparation of the Form S-4 and the Information Statement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith or with the Form S-4 or Information Statement. Merger Partner and its counsel shall be given a reasonable opportunity to review and comment on the Form S-4 and the Information Statement each time before it is filed with the SEC, and Public Company shall give reasonable and good faith consideration to any comments made by Merger Partner and its counsel. No amendment or supplement to the Form S-4 or the Information Statement shall be made by Public Company without the prior written consent of Merger Partner (such consent not to be unreasonably withheld, conditioned or delayed). Public Company shall provide Merger Partner and its counsel with (i) any comments or other communications, whether written or oral, that Public Company or its counsel may receive from time to time from the SEC or its staff with respect to the Form S-4 or the Information Statement promptly after receipt of those comments or other communications and (ii) a reasonable opportunity to participate in Public Company's response to those comments and to provide comments on that response (to which reasonable and good faith consideration shall be given by Public Company), including by participating with Public Company or its counsel in any discussions or meetings with the SEC. Public Company shall use its reasonable best efforts to promptly provide responses to the SEC with respect to any and all comments received on the Form S-4 or the Information Statement from the SEC. If any information relating to Merger Partner or Public Company, or any of their respective Affiliates or its or their respective Representatives, should be discovered by a party hereto, which information should be set forth in an amendment or supplement to the Form S-4 or the Information Statement so that the Form S-4 or the Information Statement would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they are made, not misleading, the party that discovers such information shall as promptly as practicable following such discovery notify the other party or parties (as the case may be) and after such notification, as and to the extent required by applicable Law, (i) Public Company shall promptly prepare (with the assistance of Merger Partner as provided for in this Section 6.4(b)) an amendment or supplement to the Form S-4 or the Information Statement and (ii) Public Company shall cause the Form S-4 or the Information Statement as so amended or supplemented to be filed with the SEC and, in the case of the Information Statement, to be disseminated to its stockholders. Public Company shall advise Merger Partner (and, following the Initial Effective Time, the Securityholder Representative), promptly after it receives notice thereof, of the time when the Form S-4 has become effective, the issuance of any stop order, the suspension of the qualification of the Public Company Common Stock (or other Equity Interest) issuable in connection with the Share Issuances for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Information Statement or the Form S-4.

(c) *Merger Partner Stockholder Approval*. Promptly after the Form S-4 has been declared effective under the Securities Act, and in any event no later than one (1) Business Day thereafter, Merger Partner shall distribute to its stockholders an action by written consent, in form and substance reasonably acceptable to Public Company (the "Merger Partner Written Consent"), which shall include a copy of the Form S-4, a copy of the Information Statement and a statement to the effect that the Merger Partner Board recommended that Merger Partner's stockholders vote to adopt this Agreement (the materials distributed to Merger Partner's stockholders, the "Merger Partner Stockholder Solicitation Materials"), in order to solicit the Requisite Merger Partner Stockholder Approval, which shall (i) evidence the adoption of this Agreement and the approval of the First Merger and the other transactions contemplated hereby, (ii) acknowledge that the approval given thereby is irrevocable and that such stockholder is aware of its rights to demand appraisal for its shares pursuant to Section 262 of the DGCL and that such stockholder has received and read a copy of Section 262 of the DGCL, and (iii) acknowledge that by its approval of the First Merger the stockholder is not entitled to appraisal rights with respect to its shares in connection with the First Merger and thereby waives any rights to receive payment of the fair value of its Merger Partner Capital Stock under Section 262 of the DGCL. Promptly following receipt of the Merger Partner Written Consent, duly executed by the requisite Merger Partner stockholders, and in any event no later than five (5) Business Days after the Form S-4 has been declared effective under the Securities Act, Merger Partner shall deliver to Public Company a copy of the Merger Partner Written Consent. In connection with the Merger Partner Written Consent, Merger Partner shall take all actions necessary or advisable to comply, and shall comply in all respects, with all applicable Laws and Merger Partner's Organizational Documents. Merger Partner's obligations under this Section 6.4(c) shall not be affected by the commencement, public proposal, public disclosure or communication to Merger Partner of any Acquisition Proposal or a Merger Partner Board Recommendation Change. The Merger Partner Written Consent (together with the Merger Partner Stockholder Solicitation Materials) shall be delivered to each stockholder of Merger Partner who is entitled to vote upon adoption of this Agreement at the physical or electronic address on record for such stockholder.

(d) *Merger Partner Information Statement*. Promptly following receipt of the Requisite Merger Partner Stockholder Approval, Merger Partner shall prepare and mail a notice to every stockholder of Merger Partner that did not execute the Merger Partner Written Consent, which shall include a copy of the Form S-4 and a copy of the Information Statement (the "Merger Partner Information Statement"). The Merger Partner Information Statement shall (i) provide the stockholders of Merger Partner to whom it is sent with notice of the actions taken in the Merger Partner Written Consent, including the adoption of this Agreement and the approval of the First Merger and the other transactions contemplated hereby in accordance with Section 228(e) of the DGCL and Merger Partner's Organizational Documents and (ii) contain the notice of availability of appraisal rights and related disclosure required by Section 262 of the DGCL. The Merger Partner Information Statement shall be delivered to each stockholder of Merger Partner who did not execute the Merger Partner Written Consent at the physical or electronic address on record for such stockholder.

(e) Notwithstanding the foregoing, nothing herein shall limit a party's right to terminate this Agreement pursuant to Section 8.1.

6.5 Legal Conditions to Mergers.

(a) Subject to the terms hereof, including Section 6.5(c) through Section 6.5(e), Merger Partner and Public Company shall each use reasonable best efforts to (i) take, or cause to be taken, all actions, and do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective the transactions contemplated hereby as promptly as practicable, (ii) as promptly as practicable, obtain from any Governmental Entity or any other third party any consents, licenses, permits, waivers, approvals, authorizations, or orders required to be obtained or made by Merger Partner or Public Company or any of their Subsidiaries in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, (iii) as promptly as practicable, make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement and the Mergers required under (A) the Securities Act and the Exchange Act, and any other applicable federal or state securities Laws, and (B) any other applicable Laws, and (iv) execute or deliver any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement. Merger Partner and Public Company shall reasonably cooperate with each other in connection with the making of all such filings. Merger Partner and Public Company shall use their respective reasonable best efforts to furnish to each other all information required for any application or other filing to be made pursuant to the rules and regulations of any applicable Law (including all information required to be included in the Form S-4 and the Information Statement) in connection with the transactions contemplated by this Agreement. For the avoidance of doubt, Public Company and Merger Partner agree that nothing contained in this Section 6.5(a) shall modify or affect their respective rights and responsibilities under Section 6.5(c) through Section 6.5(e).

(b) Each of Merger Partner and Public Company shall use reasonable best efforts to give (or shall cause their respective Subsidiaries to give) any notices to third parties, and use, and cause their respective Subsidiaries to use, their reasonable best efforts to obtain any third party consents related to or required in connection with the Mergers that are (i) necessary to consummate the transactions contemplated hereby, (ii) disclosed or required to be disclosed in the Merger Partner Disclosure Schedule or the Public Company Disclosure Schedule, as the case may be, or (iii) required to prevent the occurrence of an event that may have a Merger Partner Material Adverse Effect or a Public Company Material Adverse Effect, as the case may be, from occurring prior to or after the Initial Effective Time.

(c) Subject to the terms hereof, Public Company and Merger Partner shall, and shall cause each of their respective Subsidiaries to, (i) cooperate and use their respective reasonable best efforts to obtain any government clearances or approvals required under any federal, state or foreign Law, regulation or decree designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, "Antitrust Laws"); (ii) respond to any requests for information from any Governmental Entity under any Antitrust Law; (iii) obtain all necessary or advisable actions (or non-actions), decisions, orders and consents from Governmental Entities under any Antitrust Law, including the expiration or termination of any applicable waiting periods under the HSR Act or other Antitrust Laws; and (iv) make all registrations, declarations, notifications and filings as may be necessary or advisable to (A) obtain any such action (or non-action), decision, order or consent or the expiration or termination of any such waiting period, or (B) otherwise avoid any Action by any Governmental Entity under any Antitrust Law. Each party hereto shall consult and cooperate with the other parties, and consider in good faith the views of the other parties, in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with any proceeding under or relating to any Antitrust Law.

(d) Public Company agrees not to, and agrees to cause each of its Subsidiaries and other Affiliates (including Merger Sub and Merger Sub II) not to, (A) withdraw any filing made under Antitrust Law with respect to this Agreement or the Mergers, (B) otherwise extend, directly or indirectly, any waiting period under the HSR Act or any other Antitrust Law with respect to this Agreement or the Mergers, (C) enter into any agreement with a Governmental Entity to delay or not consummate the Mergers, or (D) other than in the Ordinary Course of Business or as otherwise contemplated by this Agreement, knowingly acquire or agree to acquire (through acquisition, merger, consolidation, other business combination, license, joint venture, collaboration or otherwise) any right, interest, asset (including any product or product candidate), Equity Interest, security, business or Person (or division thereof), or enter into any Contract, arrangement or relationship, if such acquisition or Contract, arrangement or relationship would be reasonably likely to (i) prevent or delay beyond the Outside Date (x) the obtaining of any action (or non-action), decision or order of any Governmental Entity, or (y) the expiration or termination of any applicable waiting period, in each case of (x) and (y), necessary to satisfy the conditions to the Closing set forth in Section 7.1(c) and Section 7.1(h); (ii) materially increase the risk of any Governmental Entity seeking or entering an order preventing (whether temporarily, preliminarily, permanently or otherwise) the consummation of the Mergers; or (iii) materially increase the risk of not being able to remove any such order on appeal or otherwise; *provided, however*, that nothing in this Section 6.5(d) shall prohibit any action required by applicable Law, required pursuant to existing Contract obligations, or taken after prior consultation with Merger Partner.

(e) Subject to the terms and conditions of this Agreement, (i) each of the parties shall (and shall cause its Affiliates, if applicable, to) as soon as reasonably practicable (and in any event within ten (10) Business Days after the date hereof) make an appropriate filing of all Notification and Report forms as required by the HSR Act with respect to the Mergers, (ii) each of the parties shall (and shall cause its Affiliates, if applicable, to), with the reasonable assistance of the other parties, as soon as reasonably practicable, file any notifications or filings required under the Antitrust Laws of any foreign jurisdiction in connection with the transactions contemplated hereby, and (iii) each of the parties shall (and shall cause its Affiliates, if applicable, to) reasonably cooperate with the other parties in (A) determining whether any other registrations, declarations, notifications or filings are required or advisable to be made with, or any other actions (or non-actions), decisions, orders or consents are required to be obtained from, any Governmental Entity in connection with the Mergers, and (B) as promptly as reasonably practicable, preparing and submitting any such other registrations, declarations, notifications or filings and seeking any such other actions (or non-actions), decisions, orders or consents. Each party shall as promptly as reasonably practicable supply all information, documentation or testimony that may be requested from such party by the U.S. Federal Trade Commission, the U.S. Department of Justice or any other Governmental Entity in connection with any such HSR Act filing (including in any "second request" under the HSR Act) or in connection with any such other required registration, declaration, notification, filing, action (or non-action), decision, order or consent, including information, documentation or testimony that may be requested by any such Governmental Entity in furtherance of its evaluation of the Mergers under applicable Antitrust Laws or other applicable Law. Public Company (or one of its Subsidiaries or other Affiliate) shall be responsible for all filing fees under the HSR Act and applicable Antitrust Laws of foreign jurisdictions incurred by such party, and each party shall pay all other out-of-pocket fees and expenses (including fees and expenses of legal counsel and outside consultants) incurred by such party or its Affiliates in connection with causing the expiration or termination of any applicable waiting periods under the HSR Act or other Antitrust Laws or obtaining any other required actions (or non-actions), decisions, orders or consents from Governmental Entities.

6.6 Public Disclosure. The initial press release announcing the execution of this Agreement shall be issued only in such form as shall be mutually agreed upon by Public Company and Merger Partner. No party shall, and no party shall permit any of its Subsidiaries or any of its Representatives to, issue any other press release or otherwise make any public statement with respect to the Mergers or this Agreement unless required by applicable Law or stock exchange rule, in which case the party required to make such disclosure shall use commercially reasonable efforts to consult with the other party before making any such press release or public statement; provided that Public Company and Merger Partner may comply with SEC requirements under the Securities Act or the Exchange Act that require any disclosure, without the consent of the other parties hereto. Without limiting the foregoing, Public Company shall, by 9:30 a.m. Eastern Time, on the first (1st) Business Day immediately following the date of exchange by the parties of the executed copies of the Merger Partner Written Consent and Public Company Written Consent, file with the SEC a Current Report on Form 8-K in form and substance as approved by Merger Partner (which approval shall not be unreasonably withheld, conditioned or delayed).

6.7 [Reserved]. [Reserved.]

6.8 D&O Indemnification.

(a) From the Initial Effective Time through the sixth (6th) anniversary of the date on which the Initial Effective Time occurs, each of Public Company and the Surviving Company shall, jointly and severally, indemnify and hold harmless each Person who is now, or has been at any time prior to the date hereof, or who becomes prior to the Initial Effective Time, a director or officer of Merger Partner, Public Company or any of their respective Subsidiaries (the "Indemnified Persons"), against all claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including reasonable and documented attorneys' fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that the Indemnified Person is or was an officer, director, employee or agent of Merger Partner, Public Company or any of their respective Subsidiaries, or, while a director or officer of Merger Partner, Public Company or any of their respective Subsidiaries, is or was serving at the request of Merger Partner, Public Company or any of their respective Subsidiaries as a director, officer, employee or agent of another Person, whether asserted or claimed prior to, at or after the Initial Effective Time, to the extent permitted under the applicable Organizational Documents. Each Indemnified Person will be entitled to advancement of expenses (including reasonable and documented attorneys' fees) incurred in the defense of any such claim, action, suit, proceeding or investigation from each of Public Company and the Surviving Company following receipt by Public Company or the Surviving Company from the Indemnified Persons of a request therefor; *provided*, that any Person to whom expenses are advanced provides an undertaking, to the extent then required by the DGCL, the DLLCA or the NRS, as applicable, to repay such advances if it is ultimately determined that such Person is not entitled to indemnification. From the Initial Effective Time through the sixth (6th) anniversary of the date on which the Initial Effective Time occurs, the Organizational Documents of the Surviving Company will contain provisions at least as favorable as the provisions relating to the indemnification, advance of expenses and elimination of Liability for monetary damages set forth in the certificate or articles of incorporation and bylaws of Merger Partner and Public Company immediately prior to the Initial Effective Time.

(b) Prior to the Initial Effective Time, Merger Partner shall determine in good faith to either (i) continue to maintain in effect for six (6) years after the Initial Effective Time, Merger Partner's or its Affiliates' directors' and officers' insurance policies and fiduciary liability insurance policies in place as of the date hereof or (ii) purchase a six (6)-year prepaid "D&O tail policy" for the non-cancellable extension of the directors' and officers' liability coverage of Merger Partner's existing directors' and officers' insurance policies for a claims reporting or discovery period of at least six (6) years from and after the Initial Effective Time with respect to any claim related to any period of time at or prior to the Initial Effective Time with terms, conditions, retentions and limits of Liability that are no less favorable than the coverage provided under Merger Partner's existing policies as of the date of this Agreement with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of Merger Partner by reason of him or her serving in such capacity that existed or occurred at or prior to the Initial Effective Time (including in connection with this Agreement or the Mergers); provided, however, that in no event shall (x) the aggregate annual premium for the insurance described in clause (i) or (y) the aggregate premium for the "D&O tail policy" described in clause (ii) exceed 250% of the aggregate annual premium paid by Merger Partner for such insurance for its most recent policy year prior to the date of this Agreement (the "Maximum Amount"); provided further, that if such insurance is not available or the premium therefor would exceed the Maximum Amount, Merger Partner shall obtain the greatest coverage available for a cost not exceeding the Maximum Amount.

(c) If so requested by Public Company in writing no later than ten (10) Business Days prior to the anticipated Closing Date, Merger Partner shall, at or prior to the Initial Effective Time, purchase, effective as of the Initial Effective Time, prepaid, non-cancellable extended reporting period or "tail" coverage under Merger Partner's existing products liability and/or cyber liability insurance policies (as specified by Public Company in such request) for a claims reporting or discovery period of such length as is specified by Public Company in such request, and with terms, conditions, retentions and limits of Liability that are no less favorable than the coverage provided under such existing policies as of the date of this Agreement.

(d) Public Company shall pay all expenses, including reasonable and documented attorneys' fees, that may be incurred by a Person in successfully enforcing such Person's rights provided in this Section 6.8.

(e) Public Company and Merger Partner agree that all rights to exculpation, indemnification and advancement of expenses for acts or omissions occurring at or prior to the Initial Effective Time, whether asserted or claimed prior to, at or after the Initial Effective Time, now existing in favor of the current or former directors, officers or employees, as the case may be, of Public Company, Merger Partner or any of their respective Subsidiaries as provided in their respective certificates of incorporation or bylaws or other Organizational Documents or in any agreement in existence immediately prior to the Initial Effective Time shall survive the Mergers and shall continue in full force and effect. The provisions of this Section 6.8 are intended to be in addition to the rights otherwise available to the current officers and directors of Public Company, Merger Partner or any of their respective Subsidiaries by Law, charter, statute, bylaw or agreement, and shall operate for the benefit of, and shall be enforceable by, each of the Indemnified Persons, their heirs and their Representatives. The obligations set forth in this Section 6.8 shall not be terminated, amended or otherwise modified in any manner that adversely affects any Indemnified Person, or any Person who is a beneficiary under the policies referred to in this Section 6.8 and their heirs and Representatives, without the prior written consent of such affected Indemnified Person or other Person.

(f) If the Surviving Company or Public Company or any of their respective successors or assigns shall (i) consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of such Person shall assume all of the obligations of such Person set forth in this Section 6.8.

(g) Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to Merger Partner, Public Company or any of their respective Subsidiaries for any of their respective directors, officers or other employees, it being understood and agreed that the indemnification provided for in this Section 6.8 is not prior to or in substitution for any such claims under such policies.

6.9 Notification of Certain Matters. Public Company shall give prompt notice to Merger Partner, and Merger Partner shall give prompt notice to Public Company, upon becoming aware of the occurrence, or failure to occur, of any event, which occurrence or failure to occur would be reasonably likely to cause (i) any representation or warranty of such party contained in this Agreement to be untrue or inaccurate in a manner that would reasonably be expected to cause the failure of a condition set forth in Article VII, in each case, at any time from and after the date of this Agreement until the Initial Effective Time, or (ii) any material failure of Public Company, Merger Sub, Merger Sub II or Merger Partner, as the case may be, or of any officer, director, employee or agent thereof, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement.

6.10 Employee Matters.

(a) Each employee of Merger Partner or the Merger Partner Subsidiary who continues to be employed with such company as of immediately prior to the Initial Effective Time (each, a "Continuing Employee") shall, during the period commencing on the Closing Date and ending on the first (1st) anniversary of the Closing Date, be provided with (i) a base salary or base wage and target annual cash bonus opportunities (excluding equity-based compensation opportunities) no less than the base salary or base wage and target annual cash bonus opportunities (excluding equity-based compensation opportunities) provided to such Continuing Employee by Merger Partner or the Merger Partner Subsidiary immediately prior to the Initial Effective Time and (ii) retirement and welfare benefits (excluding defined benefit pension, post-employment welfare benefits, and nonqualified deferred compensation) that are either (x) substantially comparable in the aggregate to those provided by Merger Partner or the Merger Partner Subsidiary immediately prior to the Initial Effective Time or (y) substantially similar to those provided by Public Company or any of its Affiliates to similarly situated employees of Public Company and its Affiliates.

(b) Public Company shall, or shall cause the Surviving Company to, use commercially reasonable efforts to provide that no pre-existing conditions, exclusions or waiting periods shall apply to Continuing Employees under the benefit plans provided for those employees, except to the extent such condition or exclusion was applicable to an individual Continuing Employee prior to the Initial Effective Time. With respect to the plan year during which the Initial Effective Time occurs, Public Company shall use commercially reasonable efforts to provide each Continuing Employee with credit for deductibles and out-of-pocket requirements paid prior to the Closing Date in satisfying any applicable deductible or out-of-pocket requirements under any benefit plan of Public Company or any of its Subsidiaries in which such Continuing Employee is eligible to participate following the Closing Date.

(c) From and after the Closing Date, Public Company shall, or shall cause the Surviving Company to, provide credit (without duplication) to Continuing Employees for their service recognized by Merger Partner or the Merger Partner Subsidiary as of the Initial Effective Time for purposes of eligibility, vesting, continuous service, determination of vacation, paid time-off, and severance entitlements to the same extent and for the same purposes as such service was credited under the Merger Partner Employee Plans; provided that such service shall not be recognized to the extent that such recognition would result in a duplication of benefits for the same period of service, for purposes of any frozen or discontinued Employee Benefit Plan of Public Company or any of its Affiliates or any frozen or discontinued portion of any Employee Benefit Plan of Public Company or any of its Affiliates or for purposes of benefit accrual under any defined benefit pension plan or for purposes of benefit accrual under any retiree medical plan.

(d) Prior to the Initial Effective Time, if requested by Public Company in writing at least ten (10) days prior to the Initial Effective Time, Merger Partner shall cause any Merger Partner Employee Plan intended to include a Code Section 401(k) arrangement (the "401(k) Plan") to be terminated effective as of no later than the day immediately preceding the Closing Date. In the event that Public Company requests that the 401(k) Plan be terminated, Merger Partner shall provide Public Company with evidence that such plan has been terminated (the form and substance of which shall be subject to review and comment by Public Company (with such comments to be included in Merger Partner's reasonable discretion)) not later than the Business Day immediately preceding the Closing Date.

(e) Prior to making any broad-based written or material oral communications to the employees or other service providers of Merger Partner or the Merger Partner Subsidiary regarding this Agreement or the Mergers and the effects thereof on the employment or service, compensation or benefits of such employees or other service providers, Merger Partner shall provide Public Company with a copy of the intended broad-based communication, and Public Company shall have a reasonable period of time to review and comment on the broad-based communication. Merger Partner shall incorporate any reasonable comments from Public Company into such broad-based communication.

(f) Merger Partner shall (i) use commercially reasonable efforts to obtain, no less than four (4) days prior to the Closing, a waiver from each "disqualified individual" (within the meaning of Section 280G of the Code and the regulations thereunder) that shall provide that, if the requisite stockholder approval under Section 280G(b)(5)(B) of the Code and the regulations thereunder is not obtained, no payments or benefits that would separately or in the aggregate constitute "excess parachute payments" (within the meaning of Section 280G of the Code and the regulations thereunder) with respect to such disqualified individual in the absence of such stockholder approval shall be payable to or retained by such disqualified individual to the extent such excess parachute payments would not be deductible by reason of the application of Section 280G of the Code or would result in the imposition of excise Taxes under Section 4999 of the Code upon such disqualified individual (a "280G Waiver"); and (ii) to the extent such 280G Waivers are obtained, submit, no less than three (3) days prior to the Closing, to the stockholders of Merger Partner, for approval in accordance with the voting requirements of Section 280G(b)(5)(B) of the Code and in a manner reasonably satisfactory to Public Company, any payments or benefits that are subject to a 280G Waiver and that Public Company determines may separately or in the aggregate constitute "parachute payments" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder), such that such payments and benefits shall not be deemed to be "parachute payments" under Section 280G of the Code if so approved. No later than one (1) day prior to the Initial Effective Time, Merger Partner shall deliver to Public Company evidence reasonably satisfactory to Public Company that a stockholder vote was solicited in conformance with Section 280G of the Code and the regulations promulgated thereunder, and that either (i) the requisite stockholder approval was obtained with respect to any payments or benefits that were subject to the stockholder vote (the "280G Approval") or (ii) the 280G Approval was not obtained and, as a consequence, such "parachute payments" shall not be made or provided pursuant to the waivers of those payments or benefits which were executed by the affected individuals in accordance with this Section 6.10. Merger Partner shall provide Public Company and its Representatives with a copy of the form of such waiver and disclosure statement for its review and approval (which approval shall not be unreasonably withheld) no less than three (3) Business Days prior to delivery to each such disqualified individual and stockholders of Merger Partner, respectively, and Merger Partner shall incorporate all reasonable comments timely provided by Public Company or its Representatives. At least ten (10) Business Days prior to the Closing, with respect to each "disqualified individual" of Merger Partner, Merger Partner shall provide to Public Company: (i) a schedule that sets forth (A) Merger Partner's reasonable, good faith estimate of all payments or benefits that would reasonably be expected to be "parachute payments" to such disqualified individual as a result of any of the transactions contemplated by this Agreement (alone or in combination with any other event), and (B) the "base amount" (as defined in Section 280G(b)(3) of the Code) for each such individual, and (ii) the underlying data and documentation on which such schedule is based.

(g) The provisions of this Section 6.10 are solely for the benefit of the parties to this Agreement, and no current or former employee or other individual associated therewith is or shall be regarded for any purpose as a third-party beneficiary to this Agreement. Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement is intended to, or does, (i) constitute the establishment of, or an amendment to, any Merger Partner Employee Plan or any Employee Benefit Plan of Public Company, the Surviving Company or any of their Affiliates, (ii) alter or limit the ability of Public Company to amend, modify or terminate any Merger Partner Employee Plan or any other benefit plan, program, agreement or arrangement, (iii) give any third party any right to enforce the provisions of this Section 6.10, (iv) prevent Merger Partner, Public Company, the Surviving Company or any of their Affiliates, prior to, at or after the Initial Effective Time, from terminating the employment of any employee (including any Continuing Employee) or (v) confer upon any such individual or legal representative any rights under or with respect to any plan, program or arrangement described in or contemplated by this Agreement, and each such individual or legal representative shall be entitled to look only to the express terms of any such plan, program or arrangement for his or her rights thereunder.

6.11 State Takeover Laws. If any "fair price," "business combination" or "control share acquisition" statute or other similar statute or regulation (or any similar anti-takeover provision of Merger Partner's or Public Company's Organizational Documents) is or may become applicable to any of the transactions contemplated by this Agreement, the parties hereto shall use their respective commercially reasonable efforts to (i) take such actions as are reasonably necessary so that the transactions contemplated hereunder may be consummated as promptly as practicable on the terms contemplated hereby and (ii) otherwise take all such actions as are reasonably necessary to eliminate or minimize the effects of any such statute or regulation on such transactions.

6.12 Security Holder Litigation. Notwithstanding anything to the contrary herein, (i) prior to the Closing, Public Company shall have the right to control the defense and settlement of any litigation related to this Agreement, the Mergers or the other transactions contemplated by this Agreement (any such litigation a "Security Holder Litigation") brought by any stockholder or any holder of other securities of Public Company, and whether a direct or derivative claim, against Public Company, any Subsidiary of Public Company and/or any of their respective directors or officers; *provided*, that Public Company shall give Merger Partner the opportunity to participate in the defense of any such Security Holder Litigation and shall not settle any such Security Holder Litigation without the prior written consent of Merger Partner (which consent shall not be unreasonably withheld, conditioned or delayed), and (ii) prior to the Closing, Merger Partner shall have the right to control the defense and settlement of any Security Holder Litigation brought by any stockholder or any holder of other securities of Merger Partner against Merger Partner and/or its directors or officers; *provided*, that Merger Partner shall give Public Company the opportunity to participate in the defense of any such Security Holder Litigation and shall not settle any such Security Holder Litigation without the prior written consent of Public Company (which consent shall not be unreasonably withheld, conditioned or delayed).

6.13 Section 16 Matters. Prior to the Initial Effective Time, Public Company shall take all such steps as may be required (to the extent permitted under applicable Law and no-action letters issued by the SEC) to cause any acquisitions of Public Company Common Stock (and any options to purchase the same) in connection with this Agreement and the transactions contemplated hereby, by each individual who is reasonably expected to become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Public Company following the Mergers, to be exempt under Rule 16b-3 promulgated under the Exchange Act; *provided*, that Merger Partner has provided Public Company with information concerning directors, officers and/or equityholders of Merger Partner sufficient for Public Company to take such steps.

6.14 Delivery of Closing Merger Partner Merger Shares Allocation Schedule. Not less than five (5) Business Days prior to the anticipated date for Closing (the "Anticipated Closing Date"), Merger Partner shall prepare and deliver to Public Company a draft schedule of all holders of Merger Partner Capital Stock (such holders, collectively, the "Participating Securityholders", and any individually, a "Participating Securityholder") and their Allocable Share and entitlements to the Merger Partner Merger Shares, in substantially the form of, and containing all of the information identified on, Section 6.14 of the Merger Partner Disclosure Schedule (the "Draft Closing Merger Partner Merger Shares Allocation Schedule"). Merger Partner shall make available to Public Company the work papers and back-up materials used in or reasonably relevant to preparing the Draft Closing Merger Partner Merger Shares Allocation Schedule and the calculations therein. Merger Partner shall consider in good faith any comments reasonably provided by Public Company within one (1) Business Day following delivery of the Draft Closing Merger Partner Merger Shares Allocation Schedule. Not less than two (2) Business Days prior to the Anticipated Closing Date, Merger Partner shall deliver to Public Company the final schedule in substantially the same form as the Draft Closing Merger Partner Merger Shares Allocation Schedule, taking into account any revisions made as a result of comments provided by Public Company (the "Closing Merger Partner Merger Shares Allocation Schedule"), prepared and certified by Merger Partner's Chief Financial Officer (or if there is no Chief Financial Officer, the Chief Executive Officer of Merger Partner) as true, correct and complete in all respects, which shall be conclusive and binding on the parties hereto. Public Company shall be entitled, without any duty of inquiry or investigation, to rely on, and make distributions of Merger Partner Merger Shares in accordance with, the Closing Merger Partner Merger Shares Allocation Schedule, and Public Company shall not be responsible for the calculations or determinations regarding such calculations set forth therein.

6.15 Merger Partner Financials. As promptly as reasonably practicable following the date hereof, Merger Partner shall deliver to Public Company (a) the audited balance sheet of Merger Partner as of December 31, 2025 and the related audited statements of income, changes in stockholders' equity and cash flows of Merger Partner for the period then ended, together with all related notes and schedules thereto (the "2025 Audited Financial Statements"), and (b) any other audited or unaudited consolidated balance sheets and the related audited or unaudited consolidated statements of operations and comprehensive loss, and stockholders' deficit and cash flows of Merger Partner as of and for a year-to-date period ended as of the end of any other different fiscal quarter (and as of and for the same period from the previous fiscal year) or fiscal year (and as of and for the prior fiscal year), together with all related notes and schedules thereto, as applicable, that are required to be included in the Form S-4, the Information Statement, or any other filing required by applicable Law. The 2025 Audited Financial Statements and such other financial statements, together with any audited or unaudited consolidated balance sheet and the related audited or unaudited consolidated statements of operations and comprehensive loss, and stockholders' deficit and cash flows of Merger Partner as of and for a year-to-date period ended as of the end of a different fiscal quarter (and as of and for the same period from the previous fiscal year) or fiscal year (and as of and for the prior fiscal year), together with all related notes and schedules thereto, that is required to be included in the Form S-4, the Information Statement, or any other filing required by applicable Law (i) will fairly present in all material respects the financial position of Merger Partner as of the date thereof, and the results of its operations, stockholders' equity and cash flows for the respective periods then ended (subject, in the case of any unaudited interim financial statements, to normal year-end audit adjustments, none of which is expected to be material), (ii) will be prepared in conformity with GAAP applied on a consistent basis during the periods involved (except, in the case of any audited financial statements, as may be indicated in the notes thereto and subject, in the case of any unaudited financial statements, to normal year-end audit adjustments, none of which is expected to be material), (iii) in the case of any audited financial statements, will be audited in accordance with the standards of the American Institute of Certified Public Accountants and contain an unqualified report of Merger Partner's auditor and (iv) will comply in all respects with the applicable accounting requirements (without giving effect to any private company accounting alternatives) and with the rules and regulations of the SEC, the Exchange Act and the Securities Act in effect as of the respective dates thereof (including Regulation S-X or Regulation S-K, as applicable).

6.16 Obligations of Merger Subs. Public Company will take all action necessary to cause Merger Sub and Merger Sub II to perform their respective obligations under this Agreement and to consummate the Mergers on the terms and conditions set forth in this Agreement.

6.17 Acknowledgment; Waiver of Conflicts; Retention of Privilege.

(a) Each of Public Company, Merger Sub and Merger Sub II acknowledges that Merger Partner has retained Bradley Arant Boult Cummings LLP ("Bradley") to act as its counsel in connection with this Agreement and the transactions contemplated hereby (the "Transactions") and that Bradley has not acted as counsel for any other party in connection with the Transactions. No party other than Merger Partner shall have the status of a client of Bradley for conflict of interest or any other purposes as a result of Bradley's representation of Merger Partner in connection with the Transactions. For the avoidance of doubt, and notwithstanding anything to the contrary set forth herein, the acknowledgments in this Section 6.17(a) shall not apply to, or waive any conflicts of interest arising out of, any representation of any Participating Securityholder or the Securityholder Representative by Bradley in any matter other than matters arising out of or relating to this Agreement, other transaction documents, or the Transactions.

(b) Each of Public Company, Merger Sub and Merger Sub II hereby (i) waives, on behalf of itself and each of its Affiliates (including, after the Initial Effective Time, the Surviving Corporation and the Surviving Company), any claim it has or may have that Bradley has a conflict of interest in connection with, or is otherwise prohibited from engaging in, such representation in connection with the Transactions, and (ii) agrees that, in the event that a dispute arises after the Closing between Public Company or any of its Affiliates (including the Surviving Company), on the one hand, and the Securityholder Representative or any Participating Securityholder or any of their respective Affiliates, on the other hand, Bradley may represent the Securityholder Representative, any Participating Securityholder, or any of their respective Affiliates in such dispute even though the interests of any such Person may be directly adverse to Public Company or any of its Affiliates (including the Surviving Company), and even though Bradley may have represented Merger Partner in connection with the Transactions; *provided*, *however*, that Public Company's consent (not to be unreasonably withheld, conditioned, or delayed) shall be required before Bradley may use any confidential information of Public Company, the Surviving Company, or any of their respective Affiliates obtained in connection with Bradley's pre-Closing representation of Merger Partner, in any such post-Closing adverse representation. Public Company acknowledges that it has had the opportunity to discuss and obtain adequate information concerning the significance and material risks of, and reasonable alternatives to, the waivers, permissions, and other provisions of this Section 6.17.

(c) Other than in the case of Fraud, and then only after a court of competent jurisdiction has determined that there is a reasonable basis to believe that such Fraud occurred, each of Public Company, Merger Sub and Merger Sub II, for themselves and their respective Affiliates (including, after the Initial Effective Time, the Surviving Corporation and the Surviving Company), agrees that, as to all communications between or among Bradley, on the one hand, and Merger Partner or any of its directors, officers, employees, or other representatives, on the other hand, that (i) were made at any time prior to the Initial Effective Time and (ii) relate to (and solely to the extent related to) this Agreement or the Transactions (collectively, "Privileged Communications"), none of them may (A) use such Privileged Communications in any action, claim or proceeding relating to this Agreement or the Transactions against or involving any Participating Securityholder or the Securityholder Representative after the Closing, and (B) invoke any attorney-client privilege, attorney work-product doctrine, or other rights to any evidentiary privilege applicable to the Privileged Communications to prevent the Securityholder Representative or any Participating Securityholder from using any such Privileged Communications in any action, claim or proceeding with Public Company; *provided*, that clause (B) shall apply without regard to any allegation or determination of Fraud. Notwithstanding the foregoing, in the event that a dispute arises after the Closing between Public Company, the Surviving Corporation, the Surviving Company, or any of their respective Affiliates, on the one hand, and a Person that is not a Participating Securityholder, the Securityholder Representative, or an Affiliate of any of the foregoing, on the other hand, the Surviving Corporation or the Surviving Company may assert the attorney-client privilege to prevent disclosure to such third party of such Privileged Communications; *provided*, that none of Public Company, the Surviving Corporation, the Surviving Company or any of their respective Affiliates may waive such privilege without the prior written consent of the Securityholder Representative (not to be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, (I) nothing in this Section 6.17(c) shall waive or modify any attorney-client privilege, work product protection, or other protection of any communications or work product of Public Company's counsel, Merger Sub's counsel, Merger Sub II's counsel, or the Surviving Corporation's or the Surviving Company's counsel and (II) all Privileged Communications shall remain privileged and protected as against any third party other than the Participating Securityholders and the Securityholder Representative.

(d) Each of the Participating Securityholders, by adopting this Agreement and accepting consideration hereunder, and the Securityholder Representative, by executing this Agreement, hereby (i) waives, on behalf of itself and each of its respective Affiliates, any claim it has or may have that Bradley has a conflict of interest in connection with, or is otherwise prohibited from engaging in, such representation in connection with the Transactions, and (ii) agrees that Bradley may, following the Closing, represent any Participating Securityholder or the Securityholder Representative in any dispute arising in connection with this Agreement or the Transactions, even if the interests of such parties are directly adverse to Public Company or any of its Affiliates (including the Surviving Corporation and the Surviving Company).

6.18 Termination of Certain Contracts. As soon as reasonably possible, and in any event within ten (10) Business Days of the date hereof, Merger Partner shall terminate each Contract listed on Section 6.18 of the Merger Partner Disclosure Schedule, without any further obligation or Liability to Merger Partner, Public Company or any of their respective Affiliates (including, after the Initial Effective Time, the Surviving Corporation and the Surviving Company) thereunder or in connection with such termination, and all Liabilities thereunder shall be satisfied in full at or prior to such termination at Merger Partner's sole cost and expense. Merger Partner shall provide to Public Company reasonable written evidence of each such termination and satisfaction, in form and substance reasonably satisfactory to Public Company.

6.19 Transition Services Agreement. Prior to the Closing, Public Company and Merger Partner shall negotiate in good faith the terms of a transition services agreement between Paragon Biosciences, LLC, as provider (and not in its capacity as the Securityholder Representative), and the Surviving Company, as recipient (the "Transition Services Agreement"). The Transition Services Agreement shall cover such services, for such periods and on such terms, as Public Company and Merger Partner may mutually agree, *provided*, *however*, that fees under the Transition Services Agreement shall be charged on an hourly basis using an hourly rate that is based on the service provider's actual cost for delivering such service.

ARTICLE VII.
CONDITIONS TO MERGERS

7.1 Conditions to Each Party's Obligation to Effect the Mergers. The respective obligations of each party to this Agreement to effect the Mergers shall be subject to the satisfaction on or prior to the Closing Date of the following conditions:

(a) Stockholder Approvals. The Requisite Merger Partner Stockholder Approval shall have been obtained by means of the Merger Partner Written Consent by the requisite consent of the stockholders of Merger Partner under applicable Law and Merger Partner's Organizational Documents. The Requisite Public Company Stockholder Approvals shall have been obtained by means of the Public Company Written Consent by the requisite consent of the stockholders of Public Company under applicable Law.

(b) Form S-4; Compliance with Rule 14c-2 and SEC Rules. The Form S-4 shall have become effective under the Securities Act and shall not be the subject of any stop order or proceeding seeking a stop order with respect to the Form S-4 that has not been withdrawn; and twenty (20) calendar days shall have elapsed following the commencement of mailing of the Information Statement to Public Company's stockholders; ***provided***, that, to the extent any rules and regulations of the SEC applicable to the Information Statement require a longer period than such 20 calendar days, then this condition shall only be satisfied upon the expiration of such longer period.

(c) No Injunctions. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any order, executive order, stop order, stay, decree, judgment or injunction (preliminary or permanent) or statute, rule or regulation which is in effect and which has the effect of making the Mergers illegal or otherwise prohibiting consummation of the Mergers.

(d) NYSE American Notification. (i) The NYSE American Listing Application shall have been approved and any notification required by the NYSE American shall have been made, and (ii) the shares of the Public Company Common Stock to be issued pursuant to the Share Issuances shall have been approved for listing (subject to official notice of issuance) on the NYSE American.

(e) Concurrent Financing. The Concurrent Financing shall have been consummated or will be consummated concurrently with the Closing or immediately prior to the Closing in accordance with the terms of the Securities Purchase Agreement.

(f) Escrow Agreement. Each of Public Company, the Securityholder Representative and the Escrow Agent shall have delivered a counterpart signature page to the Escrow Agreement.

(g) Exchange Agent Agreement. Each of Public Company, the Securityholder Representative and the Exchange Agent shall have delivered a counterpart signature page to the Exchange Agent Agreement.

(h) Antitrust. Any waiting period (and any extensions thereof pursuant to an agreement with a Governmental Entity entered into in accordance with this Agreement) applicable to the Mergers pursuant to the HSR Act shall have expired or been terminated, and any clearance or affirmative approval applicable to the Mergers under each of the other Antitrust Laws set forth in Section 7.1(h) of the Merger Partner Disclosure Schedule shall have been obtained and any mandatory waiting period related thereto shall have expired or otherwise been terminated.

7.2 Additional Conditions to the Obligations of Public Company and Merger Subs. The obligations of Public Company and the Merger Subs to effect the Mergers shall be subject to the satisfaction on or prior to the Closing Date of each of the following additional conditions, any of which may be waived in writing exclusively by Public Company and the Merger Subs:

(a) Representations and Warranties. The representations and warranties of Merger Partner set forth in Article III (in each case as qualified and limited by the Merger Partner Disclosure Schedule) and in any certificate or other writing delivered by Merger Partner pursuant hereto shall be true and correct (i) as of the date of this Agreement (except in the case of this clause (i), (A) to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date, and (B) where the failure to be true and correct (without regard to any materiality or Merger Partner Material Adverse Effect qualifications contained therein), individually or in the aggregate, has not had, and is not reasonably likely to have, a Merger Partner Material Adverse Effect) and (ii) as of the Closing Date as though made on and as of the Closing Date (except in the case of this clause (ii), (A) to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date, (B) for changes expressly provided for in this Agreement, and (C) where the failure to be true and correct (without regard to any materiality or Merger Partner Material Adverse Effect qualifications contained therein), individually or in the aggregate, has not had, and is not reasonably likely to have, a Merger Partner Material Adverse Effect); *provided*, *however*, that the representations and warranties made by Merger Partner in Sections 3.1, 3.2, 3.4, 3.7(a), 3.19 and 3.20 shall not be subject to the qualifications set forth in clauses (i)(B) and (ii)(C) above and instead shall be true and correct in all but *de minimis* respects.

(b) Performance of Obligations of Merger Partner. Merger Partner shall have performed in all material respects all obligations required to be performed by it under this Agreement on or prior to the Closing Date.

(c) No Merger Partner Material Adverse Effect. No Merger Partner Material Adverse Effect shall have occurred since the date of this Agreement and be continuing.

(d) Officers' Certificate. Public Company shall have received an officers' certificate duly executed by the Chief Executive Officer of Merger Partner to the effect that the conditions of Sections 7.2(a), (b) and (c) have been satisfied.

(e) Third Party Consents. Merger Partner shall have obtained all consents and approvals of third parties (other than a Governmental Entity) listed in Section 7.2(e) of the Merger Partner Disclosure Schedule.

(f) FIRPTA Certificate. Merger Partner shall have delivered to Public Company a duly executed certification stating that it is not and has not within the applicable period been a "United States real property holding corporation," as defined in Section 897 of the Code, and corresponding notice to the Internal Revenue Service, each in form and substance required under Treasury Regulations Section 1.897-2(h) and Treasury Regulations Section 1.1445-2(c)(3).

(g) Lock-Up Agreements. Public Company shall have received lock-up agreements, substantially in the form attached hereto as Exhibit A, duly executed by those Merger Partner stockholders listed on Section 7.2(g) of the Merger Partner Disclosure Schedule.

(h) TSA. Public Company shall have received a fully executed copy of the Transition Services Agreement contemplated by Section 6.19.

7.3 Additional Conditions to the Obligations of Merger Partner. The obligation of Merger Partner to effect the Mergers shall be subject to the satisfaction on or prior to the Closing Date of each of the following additional conditions, any of which may be waived, in writing, exclusively by Merger Partner:

(a) Representations and Warranties. The representations and warranties of Public Company and the Merger Subs set forth in Article IV (in each case as qualified and limited by the Public Company Disclosure Schedule) and in any certificate or other writing delivered by Public Company or any Merger Sub pursuant hereto shall be true and correct (i) as of the date of this Agreement (except in the case of this clause (i), (A) to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date and (B) where the failure to be true and correct (without regard to any materiality or Public Company Material Adverse Effect qualifications contained therein), individually or in the aggregate, has not had, and is not reasonably likely to have, a Public Company Material Adverse Effect) and (ii) as of the Closing Date as though made on and as of the Closing Date (except in the case of this clause (ii), (A) to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date, (B) for changes contemplated by this Agreement and (C) where the failure to be true and correct (without regard to any materiality or Public Company Material Adverse Effect qualifications contained therein), individually or in the aggregate, has not had, and is not reasonably likely to have, a Public Company Material Adverse Effect); *provided*, *however*, that the representations and warranties made by Public Company and the Merger Subs in Sections 4.1, 4.2 (disregarding any effects of the filing of the Series B Certificate of Designation and the Concurrent Financing), 4.4, 4.7(a), 4.20, 4.22 and 4.24 shall not be subject to the qualifications set forth in clauses (i)(B) and (ii)(C) above and instead shall be true and correct in all but *de minimis* respects.

(b) Performance of Obligations of Public Company and Merger Subs. Each of Public Company and the Merger Subs shall have performed in all material respects all obligations required to be performed by it under this Agreement on or prior to the Closing Date.

(c) No Public Company Material Adverse Effect. No Public Company Material Adverse Effect shall have occurred since the date of this Agreement and be continuing.

(d) Officers' Certificate. Merger Partner shall have received an officers' certificate duly executed by the Chief Executive Officer of Public Company to the effect that the conditions of Sections 7.3(a), (b), and (c) have been satisfied.

ARTICLE VIII.
TERMINATION AND AMENDMENT

8.1 Termination. This Agreement may be terminated at any time prior to the Initial Effective Time (with respect to Sections 8.1(b) through 8.1(i), by written notice by the terminating party to the other party), whether before or, subject to the terms hereof, after obtaining the Requisite Merger Partner Stockholder Approval or the Requisite Public Company Stockholder Approvals:

(a) by mutual written consent of Public Company and Merger Partner;

(b) by either Public Company or Merger Partner if the First Merger shall not have been consummated by 5:00 p.m., Eastern time, on February 1, 2027 (as extended in accordance with this Section 8.1(b), the "Outside Date") except that in the event that on such date the conditions set forth in Section 7.1(a), Section 7.1(b), Section 7.1(c) (with respect to securities Laws) or Section 7.1(d) have not been satisfied, in the case of the conditions set forth in Section 7.1(a), Section 7.1(b) and Section 7.1(d), due to the Form S-4 not having become effective under the Securities Act at least twenty (20) Business Days prior to the Outside Date, but the other conditions set forth in Section 7.1, Section 7.2 and Section 7.3 have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing, and which conditions are capable of being satisfied if the Closing were to occur), then the Outside Date shall be automatically extended (without any further action by any party hereto) to 5:00 p.m., Eastern time, on March 31, 2027 (provided that the right to terminate this Agreement under this Section 8.1(b) shall not be available to Public Company or Merger Partner if such party's (or, in the case of Public Company, either Merger Sub's) failure to fulfill any obligation under this Agreement has been a principal cause of the failure of the First Merger to occur on or before the Outside Date);

(c) by either Public Company or Merger Partner if a Governmental Entity of competent jurisdiction shall have issued a nonappealable final order, decree or ruling or taken any other nonappealable final action, in each case having the effect of permanently restraining, enjoining or otherwise prohibiting the Mergers; *provided*, that a party hereto shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the issuance of any such order, decree, ruling or other action is principally attributable to the failure of such party (or any Affiliate of such party) to perform in any material respect any covenant in this Agreement required to be performed by such party (or any Affiliate of such party) at or prior to the Initial Effective Time;

(d) by Merger Partner if the Requisite Public Company Stockholder Approvals are not obtained by delivery of the Public Company Written Consent within one (1) Business Day of the date hereof;

(e) by Public Company, if at any time prior to the receipt of the Requisite Merger Partner Stockholder Approval: (i) the Merger Partner Board shall have effected a Merger Partner Board Recommendation Change, or (ii) Merger Partner shall have materially breached its obligations under Section 6.1, Section 6.4(c) or Section 6.4(d);

(f) by Merger Partner, at any time prior to the receipt of the Requisite Public Company Stockholder Approvals, if: (i) the Public Company Board shall have effected a Public Company Board Recommendation Change, or (ii) Public Company shall have materially breached its obligations under Section 6.1 or Section 6.4(a);

(g) by Public Company, if there has been a breach of or failure to perform any representation, warranty, covenant or agreement set forth in this Agreement on the part of Merger Partner, which breach would cause the conditions set forth in Section 7.2(a), Section 7.2(b) or Section 7.2(c) not to be satisfied; *provided*, that Public Company is not then in material breach of any representation, warranty or covenant under this Agreement; and provided, further, that if such breach or failure to perform is curable by Merger Partner, then this Agreement shall not terminate pursuant to this Section 8.1(g) as a result of such particular breach or failure until the expiration of a thirty (30)-calendar day period commencing upon delivery of written notice from Public Company to Merger Partner of such breach or failure and it being understood that this Agreement shall not terminate pursuant to this Section 8.1(g) as a result of such particular breach or failure if such breach or failure is cured prior to such termination becoming effective; *provided*, *however*, that the foregoing cure period shall not be applicable with respect to a violation or breach of any covenant or agreement required to be performed on the Closing Date;

(h) by Merger Partner, if there has been a breach of or failure to perform any representation, warranty, covenant or agreement set forth in this Agreement on the part of Public Company, which breach would cause the conditions set forth in Section 7.3(a), Section 7.3(b), or Section 7.3(c) not to be satisfied; *provided*, that Merger Partner is not then in material breach of any representation, warranty or covenant under this Agreement; and provided, further, that if such breach or failure to perform is curable by Public Company or any Merger Sub, then this Agreement shall not terminate pursuant to this Section 8.1(h) as a result of such particular breach or failure until the expiration of a thirty (30)-calendar day period commencing upon delivery of written notice from Merger Partner to Public Company of such breach or failure and it being understood that this Agreement shall not terminate pursuant to this Section 8.1(h) as a result of such particular breach or failure if such breach or failure is cured prior to such termination becoming effective; *provided*, *however*, that the foregoing cure period shall not be applicable with respect to a violation or breach of any covenant or agreement required to be performed on the Closing Date; or

(i) by Public Company, if the Requisite Merger Partner Stockholder Approval is not obtained by delivery of the Merger Partner Written Consent within five (5) Business Days of the Form S-4 becoming effective in accordance with the provisions of the Securities Act.

8.2 Effect of Termination. In the event of a valid termination of this Agreement as provided in Section 8.1, this Agreement shall immediately become void and there shall be no Liability or obligation on the part of Public Company, Merger Partner, Merger Sub, Merger Sub II or their respective officers, directors, stockholders or Affiliates; *provided*, that (a) any such termination shall not relieve any party from Liability for any willful and material breach of this Agreement or Fraud and, with respect to any willful and material breach of this Agreement or Fraud by Public Company, such Liability may include, without limitation, the loss of the benefit of the bargain contemplated by this Agreement, including the value of the Merger Partner Merger Shares and the Escrow Shares lost by the Participating Securityholders (and Merger Partner shall have the sole authority, on behalf of the Participating Securityholders, to enforce the award of any such Liabilities and accept damages for such breach on behalf of the Participating Securityholders), but excluding, for the avoidance of doubt, any value attributed to the Milestone Payments, Contingent Shares or PRV Proceeds, and (b) the provisions of Section 5.3 (Confidentiality), this Section 8.2 (Effect of Termination), Section 8.3 (Fees and Expenses) and ARTICLE XI (Miscellaneous) and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement. A "willful and material breach" by a party of a provision of this Agreement means a material breach that is the consequence of a party knowingly undertaking an action, or failing to undertake an action, with the understanding that the action, or failure to act, was or would reasonably be expected to be a breach by such party of the applicable provisions of this Agreement. For purposes of this Agreement, the failure to consummate the Closing pursuant to, and when required by, the terms of this Agreement shall constitute a willful and material breach hereunder.

8.3 Fees and Expenses. Except as set forth in this Section 8.3 or expressly set forth in this Agreement, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, whether or not the Mergers are consummated. Notwithstanding the foregoing:

(a) Merger Partner and Public Company shall share equally (i) all fees and expenses of the Exchange Agent and (ii) all fees and expenses, other than accountants' and attorneys' fees, incurred with respect to the printing, filing and mailing of the Form S-4, the Information Statement, and any amendments or supplements thereto; and

(b) if the Mergers are consummated, Public Company shall pay all Merger Partner Transaction Expenses on the Closing Date to the extent not paid by Merger Partner, including funding the Reserve Amount.

ARTICLE IX.
CONTINGENT CONSIDERATION

9.1 Contingent Cash Consideration.

(a) Milestone Payments. Subject to the terms and conditions of this Agreement, Public Company shall pay each of the following Milestone Payments to the Participating Securityholders (excluding holders of Dissenting Shares) upon the achievement of the Milestone for such Milestone Payment:

(i) *Clinical Milestone*. Fifty Million Dollars ($50,000,000) (the "Clinical Milestone Payment") upon achievement, by 11:59 p.m. Eastern time on June 30, 2029, of the Clinical Milestone.

(ii) *First Commercial Sale Milestone*. Fifty Million Dollars ($50,000,000) (the "Commercial Sale Milestone Payment") upon the first commercial sale of D-Fi in the United States (the "Commercial Sale Milestone").

(iii) *First Revenue Milestone*. Fifty Million Dollars ($50,000,000) (the "First Revenue Milestone Payment") upon the first achievement of D-Fi Net Sales of at least One Hundred Million Dollars ($100,000,000) during any TTM Period (the "First Revenue Milestone").

(iv) *Second Revenue Milestone*. Seventy-Five Million Dollars ($75,000,000) (the "Second Revenue Milestone Payment") upon the first achievement of D-Fi Net Sales of at least Two Hundred Fifty Million Dollars ($250,000,000) during any TTM Period (the "Second Revenue Milestone").

(v) *Third Revenue Milestone*. Seventy-Five Million Dollars ($75,000,000) (the "Third Revenue Milestone Payment") upon the first achievement of D-Fi Net Sales of at least Five Hundred Million Dollars ($500,000,000) during any TTM Period (the "Third Revenue Milestone", and together with the First Revenue Milestone and Second Revenue Milestone, the "Revenue Milestones").

(b) D-Fi Net Sales Statements.

(i) Within forty-five (45) days after the end of each Reporting Period, beginning with the first full Reporting Period following the first commercial sale of D-Fi in the United States, Public Company shall provide the Securityholder Representative with a statement (each, a "D-Fi Net Sales Statement") setting forth a reasonably detailed calculation of D-Fi Net Sales in U.S. Dollars for such Reporting Period, including the application of any applicable reduction. Public Company shall keep, and shall cause its Affiliates to keep, complete and accurate books and records to the extent necessary to calculate, and enable verification of, D-Fi Net Sales. The amounts set forth on each D-Fi Net Sales Statement and the calculations thereof shall be in strict accordance with the definition of D-Fi Net Sales.

(ii) Each D-Fi Net Sales Statement shall set forth the following, in each case presented both for the applicable Reporting Period in the aggregate and separately for each of the three (3) calendar months included in such Reporting Period: (A) total gross sales of D-Fi by Public Company, its Affiliates and their respective licensees and sublicensees; and (B) D-Fi Net Sales, together with an itemized breakdown of the sum of each category of deduction taken from gross sales to arrive at D-Fi Net Sales.

(iii) Each D-Fi Net Sales Statement shall also set forth D-Fi Net Sales for the TTM Period ending on the last day of each calendar month included in such Reporting Period.

(c) Reporting; Payment Timing and Mechanics.

(i) If a Milestone is achieved, then within forty-five (45) days following the date on which such Milestone is achieved, Public Company shall prepare and deliver to the Securityholder Representative a written notice (each, a "Milestone Achievement Notice") setting forth (A) that the applicable Milestone has been achieved; (B) in the case of a Revenue Milestone, Public Company's calculation of D-Fi Net Sales for the applicable TTM Period; (C) the aggregate Milestone Payment payable with respect to such Milestone; (D) Public Company's calculation of the Contingent Expenses payable in respect of such Milestone Payment; (E) the net Milestone Payment payable to the Participating Securityholders after deduction of such Contingent Expenses; and (F) reasonable supporting documentation for each of the foregoing. Within five (5) Business Days after the date on which the amount of the applicable Milestone Payment becomes final pursuant to Section 9.4, the Securityholder Representative shall prepare and deliver to Public Company and the Exchange Agent a schedule (the "Milestone Payment Allocation Schedule") of the Participating Securityholders (and Permitted Alternative Payees, if applicable) and their Allocable Share of the applicable Milestone Payment in substantially the form of the Closing Merger Partner Merger Shares Allocation Schedule. Public Company shall be entitled, without any duty of inquiry or investigation, to rely on, and make (or cause to be made) distributions of Milestone Payments in accordance with, the applicable Milestone Payment Allocation Schedule, and Public Company shall not be responsible for the calculations or determinations regarding such calculations set forth therein. Subject to Section 2.2(h) and finality of the applicable Milestone Payment, Public Company shall pay the corresponding Milestone Payment (if any) (net of the Contingent Expenses as finally determined pursuant to this Article IX) to the Participating Securityholders (and Permitted Alternative Payees, if applicable, but excluding holders of Dissenting Shares) in accordance with the applicable Milestone Payment Allocation Schedule, within ten (10) Business Days after the receipt of the Milestone Payment Allocation Schedule by Public Company and the Exchange Agent.

(ii) All Milestone Payments shall be paid by wire transfer of immediately available funds to such bank accounts of the Participating Securityholders or Permitted Alternative Payees as designated by the Securityholder Representative on the applicable Milestone Payment Allocation Schedule.

(d) Late Payment Remedies. Notwithstanding anything herein to the contrary, any undisputed amount of any Milestone Payment not paid when due pursuant to Section 9.1(c)(i) shall accrue interest thereon from (and including) the date such payment was to be made pursuant to the terms of Section 9.1(c)(i) to the date actually paid in full at an interest rate equal to the lesser of (i) the Federal Rate plus three percent (3%) per annum and (ii) the maximum interest rate permitted under applicable Law, in each case, compounded monthly. With respect to any amounts of any Milestone Payment that are the subject of a Dispute Notice, if such amount is found to be payable to the Securityholder Representative in accordance with Section 9.4, such amount will begin to accrue interest in accordance with this Section 9.1(d) upon the final resolution of such dispute.

9.2 Contingent Share Consideration.

(a) FDA Approval. In the event that FDA Approval of D-Fi is received by Public Company (such date, the "Approval Date") on or prior to 11:59 p.m., Eastern time, on March 31, 2036 (such date and time, the "D-Fi Expiration Time"), then Public Company shall deliver written notice to the Securityholder Representative of the receipt of FDA Approval, including a copy of the notice thereof received from the FDA, within ten (10) Business Days following the Approval Date (the "FDA Approval Notice").

(b) Issuance of Contingent Shares and Payment of any Contingent Expenses. If the Approval Date occurs by the D-Fi Expiration Time, then within fifteen (15) Business Days of receipt of the FDA Approval Notice, the Securityholder Representative shall prepare and deliver to Public Company and the Exchange Agent a schedule (the "Contingent Shares Allocation Schedule") of the Participating Securityholders (and Permitted Alternative Payees, if applicable) and their Allocable Share of the Contingent Shares, in substantially the form of the Closing Merger Partner Merger Shares Allocation Schedule. Public Company shall be entitled, without any duty of inquiry or investigation, to rely on, and issue Contingent Shares in accordance with, the Contingent Shares Allocation Schedule, and Public Company shall not be responsible for the calculations or determinations regarding such calculations set forth therein. Public Company promptly shall deliver the Contingent Shares Allocation Schedule to its transfer agent and instruct its transfer agent to issue the Contingent Shares in accordance with the Contingent Shares Allocation Schedule. Promptly following receipt of an invoice for any Contingent Expenses (solely to the extent such Contingent Expenses were taken into account in the calculation of Contingent Shares payable pursuant to this Agreement), Public Company will pay, or cause to be paid, such amount in full.

(c) Cancellation of Contingent Shares. In the event the D-Fi Expiration Time occurs and FDA Approval has not been obtained, the Participating Securityholders shall not have any right to receive Contingent Shares or any benefit therefrom.

(d) No Fractional Shares. No certificate or scrip representing fractional Contingent Shares shall be issued, and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a stockholder of Public Company. For purposes of this Section 9.2(d), all fractional Contingent Shares to which a single Participating Securityholder would be entitled shall be aggregated and calculations shall be rounded to three decimal places. Any fractional Contingent Share a Participating Securityholder would otherwise be entitled to receive shall be rounded up to the nearest whole share, and no cash or other consideration shall be paid for any such fractional Contingent Share.

(e) Equitable Adjustments. In the event of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to Public Company Common Stock or Public Company Preferred Stock occurring after the date hereof and prior to the date upon which the Contingent Shares are issued, all references herein to specified numbers of Contingent Shares, and all calculations provided for that are based upon numbers of shares of any class or series (or prices therefor) affected thereby, shall be equitably adjusted to the extent necessary to provide the parties the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change. Nothing in this Section 9.2(e) shall be construed to permit Merger Partner, Public Company or any Subsidiary of Public Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

9.3 PRV Request and PRV Sale Transaction.

(a) The Surviving Company shall submit a PRV Request to the FDA in connection with the Biologics License Application for D-Fi. The Surviving Company shall have the sole responsibility for interacting with the FDA or any other applicable Governmental Entity, responding to inquiries with respect to any documentation associated with the PRV Request and filing all updates to such filings that may be required.

(b) Upon notification from the FDA of approval of D-Fi and evidence of the FDA's grant of a Priority Review Voucher, Public Company or the Surviving Company shall promptly (but in any event within five (5) Business Days) notify the Securityholder Representative as to such receipt and provide the Securityholder Representative with a true, correct and complete copy of the approval letter from the FDA that evidences such Priority Review Voucher.

(c) Upon Public Company's or the Surviving Company's notification to the Securityholder Representative of the FDA's grant of a Priority Review Voucher in connection with the approval of the Biologics License Application for D-Fi, the Securityholder Representative may negotiate the terms and conditions of a PRV Sale Transaction on behalf of the Surviving Company. Notwithstanding the foregoing, the Surviving Company shall not be required to enter into or consummate any PRV Sale Transaction unless the definitive agreement for such PRV Sale Transaction (i) provides that the representations and warranties of the Surviving Company and its Affiliates thereunder are limited to fundamental representations and warranties (i.e., due organization, authority and enforceability, title to the Priority Review Voucher and non-contravention), (ii) provides that all representations and warranties of the Surviving Company and its Affiliates thereunder do not survive the closing of such PRV Sale Transaction (i.e., on an "as-is" basis and with no survival), (iii) does not include any non-competition, non-solicitation, exclusivity or other restrictive covenant or similar obligation that would restrict or limit the business operations or activities of the Surviving Company or any of its Affiliates in any respect, and (iv) does not include any indemnification or other obligation of the Surviving Company or any of its Affiliates that would survive the closing of such PRV Sale Transaction, other than customary post-closing obligations, such as confidentiality and further assurances, that are limited in scope and duration, in each case, as reasonably determined by Public Company (the "Acceptable PRV Sale Terms"). Any proposed sale of the Priority Review Voucher that involves consideration in the form of capital stock or other equity interests of any Person shall require the prior written consent of Public Company, which consent shall not be unreasonably withheld, conditioned or delayed. If the Securityholder Representative negotiates a PRV Sale Transaction on Acceptable PRV Sale Terms, the Securityholder Representative shall promptly (but in any event within five (5) Business Days) notify Public Company and provide Public Company with a true, correct and complete copy of the proposed definitive agreements with respect to a PRV Sale Transaction. The Securityholder Representative shall consider in good faith any comments timely provided by Public Company on such definitive agreements with respect to a PRV Sale Transaction, and shall be obligated to incorporate any such reasonable comments. Following the incorporation of such reasonable comments, Public Company shall cause the Surviving Company to use its reasonable best efforts to enter into such definitive agreements with respect to a PRV Sale Transaction, and to consummate a PRV Sale Transaction, in each case in accordance with the Acceptable PRV Sale Terms and such terms and conditions as may be set forth in the definitive agreements with respect to such PRV Sale Transaction. Upon the consummation of a PRV Sale Transaction, Public Company and the Surviving Company shall pay the PRV Interest to the Participating Securityholders in accordance with Section 9.3(d). For the avoidance of doubt, the obligations set forth in this Section 9.3 shall survive any Change of Control.

(d) Public Company shall deliver written notice to the Securityholder Representative of the amount of the PRV Proceeds (accompanied by supporting documentation and calculations) (the "PRV Sale Transaction Notice") within five (5) Business Days after the consummation of the PRV Sale Transaction. Within five (5) Business Days after receipt of the amount of the PRV Proceeds, the Securityholder Representative shall prepare and deliver to Public Company and the Exchange Agent a schedule (the "PRV Interest Allocation Schedule") of the Participating Securityholders and their Allocable Share of the PRV Interest. Public Company shall be entitled, without any duty of inquiry or investigation, to rely on, and make distributions of the PRV Interest in accordance with, the PRV Interest Allocation Schedule, and Public Company shall not be responsible for the calculations or determinations regarding such calculations set forth therein. Subject to Section 2.2(h) and finality of the applicable PRV Interest, Public Company shall pay the PRV Interest to the Participating Securityholders (excluding holders of Dissenting Shares) in accordance with the PRV Interest Allocation Schedule, within thirty (30) days after the amount of the PRV Interest becomes final pursuant to Section 9.4.

9.4 Disputes.

(a) If the Securityholder Representative in good faith disagrees with Public Company's determination of (A) the achievement of any Milestone, (B) the number of Contingent Shares issuable hereunder, (C) the PRV Proceeds amount, or (D) the Total Stock Consideration Percentage and any Adjustment Contingent Shares (or with any calculation or determination set forth in or included with the applicable Milestone Achievement Notice, FDA Approval Notice, PRV Sale Transaction Notice, or Contingent Payment Adjustment Notice), the Securityholder Representative shall deliver written notice of such disagreement (a "Dispute Notice") to Public Company within thirty (30) days (except that this shall be five (5) Business Days in the case of a dispute as to the number of Contingent Shares) after receipt of the applicable Milestone Achievement Notice, FDA Approval Notice, PRV Sale Transaction Notice or Contingent Payment Adjustment Notice. To the extent reasonably determinable based on the materials and information provided by Public Company, the Dispute Notice shall specify in reasonable detail the basis of the disagreement and, to the extent that Public Company has provided the Securityholder Representative with sufficient information to do so, the Securityholder Representative's calculation of the disputed items.

(b) If the Securityholder Representative delivers a timely Dispute Notice, Public Company and the Securityholder Representative shall attempt in good faith to resolve such dispute for a period of thirty (30) days following delivery of the Dispute Notice (the "Resolution Period"). If Public Company and the Securityholder Representative are unable to resolve the dispute within the Resolution Period, then either party may submit the disputed items for resolution by an independent nationally recognized accounting firm mutually acceptable (acting reasonably) to Public Company and the Securityholder Representative (the "Accounting Firm"), to resolve all matters in dispute, adjudicating only those matters still in dispute.

(c) The Accounting Firm shall act as an expert and not as an arbitrator and shall make a determination only with respect to the specific items in dispute and only in accordance with this Agreement and, to the extent applicable, GAAP (with the understanding that in the case of a conflict or inconsistency between the terms of this Agreement and GAAP, the terms of this Agreement shall be controlling). The Accounting Firm's determination of any disputed item shall not be more favorable to Public Company than reflected in the applicable Milestone Achievement Notice, FDA Approval Notice, PRV Sale Transaction Notice or Contingent Payment Adjustment Notice nor more favorable to the Securityholder Representative than reflected in the Dispute Notice, and shall be final, conclusive and binding on all parties, absent manifest error or fraud.

(d) The Accounting Firm shall offer the Securityholder Representative and Public Company the opportunity to provide written submissions regarding their positions on the disputed matters, which written submissions shall be provided to the Accounting Firm, if at all, no later than twenty (20) days after the date of referral of the disputed matters to the Accounting Firm. The determination of the Accounting Firm shall be based solely on such written submissions by the Securityholder Representative and Public Company and their respective Representatives and the terms and conditions of this Agreement and shall not be by independent review. There shall be no ex parte communications between Public Company (or its Representatives) or the Securityholder Representative, on the one hand, and the Accounting Firm, on the other hand, relating to the disputed items and, unless requested by the Accounting Firm in writing, no party may present any additional information or arguments to the Accounting Firm, either orally or in writing. The Accounting Firm shall deliver a written report resolving only the disputed matters submitted to the Accounting Firm and setting forth the basis for such resolution within thirty (30) days after the dispute is submitted for its determination. In preparing its report, the Accounting Firm shall not assign a value to any disputed amount greater than the greatest value for such disputed amount, or less than the smallest value for such disputed amount, submitted by the Securityholder Representative, on the one hand, or Public Company, on the other hand, and the Accounting Firm shall resolve such disputed amounts by determining whether they are calculated in accordance with this Agreement.

(e) The fees and expenses of the Accounting Firm shall be allocated between Public Company, on the one hand, and the Securityholder Representative (on behalf of the Participating Securityholders), on the other hand, in the same proportion that the aggregate dollar amount of disputed items that are not resolved in favor of such party, as applicable, bears to the total dollar amount of disputed items resolved by the Accounting Firm.

(f) Upon reasonable prior notice, Public Company and the Surviving Company shall provide the Securityholder Representative and its Representatives with reasonable access during normal working hours to the work papers (subject to the execution of customary work paper access letters, if requested), back-up materials and other books and records of Public Company and the Surviving Company, in each case, solely for the purpose of assisting the Securityholder Representative in its review of a Milestone Achievement Notice, FDA Approval Notice, PRV Sale Transaction Notice or Contingent Payment Adjustment Notice and the information and calculations contained or required to be contained therein. Upon reasonable prior notice, Public Company and the Surviving Company shall provide the Securityholder Representative and its Representatives with reasonable access during normal working hours to (i) the personnel of Public Company or the Surviving Company who were responsible for the preparation of the applicable notice and (ii) Public Company's accountants (subject to the execution of customary confidentiality agreements or work paper access letters, if requested), in the case of each of clauses (i) and (ii), solely for the purpose of assisting the Securityholder Representative in its review of a Milestone Achievement Notice, FDA Approval Notice, PRV Sale Transaction Notice or Contingent Payment Adjustment Notice and the information and calculations contained or required to be contained therein.

9.5 Post-Closing Obligations and Efforts.

(a) Commercially Reasonable Efforts.

(i) Public Company shall, and shall cause the Surviving Company to, use Commercially Reasonable Efforts to (i) perform and attempt to complete the material activities outlined in the Product Development Plan in the timeframes set forth therein and (ii) prepare, execute, deliver and file any and all agreements, documents or instruments that are necessary or desirable to secure and, once approved, maintain Regulatory Approval for D-Fi in a Major Market.

(ii) Public Company shall, and shall cause the Surviving Company to, use Commercially Reasonable Efforts not to withdraw or abandon, or fail to take any action necessary to prevent the withdrawal or abandonment of, any Regulatory Approval in a Major Market for the Covered Product once obtained. Following receipt of Regulatory Approval for the Covered Product in a Major Market, Public Company shall, and shall cause the Surviving Company to, use Commercially Reasonable Efforts to Exploit the Covered Product in a Major Market.

(b) Record Keeping by Public Company; Audit Rights. From and after the Closing and until the latest of the payment of the Third Revenue Milestone Payment, the payment of the PRV Interest or the issuance of the Contingent Shares, Public Company shall maintain books and records in sufficient detail to permit verification of all Milestones and Milestone Payments under this Agreement. No more than once in any given twelve (12) month period, upon thirty (30) days' prior written notice, the Securityholder Representative may engage, at its expense, an independent certified public accounting firm of nationally recognized standing, to perform a limited inspection or audit of the relevant books and records of Public Company during normal business hours solely to verify the accuracy of any D-Fi Net Sales Statement relating to any period within the prior twenty-four (24) months that has not previously been subject to any such review. Public Company shall reasonably cooperate with the independent certified public accounting firm. Public Company shall provide the independent certified public accounting firm with (i) reasonable access during normal business hours to the designated Representatives and to the relevant books, records, documents and information relating to the calculation of D-Fi Net Sales in respect of the periods subject to such audit, and (ii) copies of such relevant books, records, documents and information, in each case of the foregoing clauses (i) and (ii), to the extent reasonably requested by the independent certified public accounting firm and subject to the execution of customary confidentiality agreements or work paper access letters, if requested; *provided*, *however*, that any such access shall be conducted at a reasonable time, under the supervision of appropriate personnel of Public Company and in such a manner as not to unreasonably interfere with the normal operation of the business of Public Company or create a risk of damage or destruction to any property. If the result of any audit conducted pursuant to this Section 9.5(b) is payment of an underpayment to the Securityholder Representative pursuant to Section 9.5(c), then the Securityholder Representative may conduct a second audit pursuant to this Section 9.5(b) in the same applicable twelve (12)-month period. The independent certified public accounting firm shall disclose to the Securityholder Representative only whether the calculations of D-Fi Net Sales set forth on the applicable D-Fi Net Sales Statement are correct or not and the specific details concerning any discrepancies. No other information shall be shared, and in no event shall Public Company or the Surviving Company be required to provide any Tax Returns or any other Tax information it reasonably deems confidential to the Securityholder Representative or any other party (other than the independent certified public accounting firm, subject to the confidentiality agreement referenced above).

(c) Underpayments/Overpayments. If the accounting firm determines that additional Milestone Payments were owed for the audited period, Public Company shall pay, or cause to be paid, to the Securityholder Representative (for further distribution to the Participating Securityholders) such underpayment within thirty (30) days of receiving the accounting firm's written report. If the accounting firm determines that more Milestone Payments were paid than should have been for the audited period, Public Company shall offset such overpayment against any amounts otherwise due from Public Company under this Agreement. If any underpayment exceeds ten percent (10%) of the amount correctly owed, the fees and expenses of the accounting firm shall be borne by Public Company.

(d) Survival of Obligations. All obligations of Public Company and the Surviving Company under this Article IX, including but not limited to the obligation to deliver Contingent Shares (or the Contingent Consideration Equivalent) pursuant to Section 9.2, to make Milestone Payments pursuant to Section 9.1, to deliver PRV Interest pursuant to Section 9.3, and to use Commercially Reasonable Efforts pursuant to Section 9.5(a) (collectively, the "Article IX Obligations"), shall run with the Product Rights and bind Public Company, the Surviving Company, each COC Acquiror, and each of their respective successors and permitted assigns until all Article IX Obligations have been satisfied in full.

9.6 Acknowledgments. Notwithstanding the foregoing, each of Merger Partner, the Securityholder Representative and the Participating Securityholders acknowledges and agrees that (i) the rights to receive Contingent Shares, Milestone Payments and the PRV Interest are solely contractual rights, (ii) the rights to receive Contingent Shares, Milestone Payments and the PRV Interest are speculative and subject to numerous factors outside the control of the parties, including the receipt of FDA Approval, achievement of the Clinical Milestone or commercialization of D-Fi, (iii) there is no assurance that the Participating Securityholders will be entitled to receive any Contingent Shares, Milestone Payments or PRV Interest payment, and, except for the obligations of Public Company and the Surviving Company set forth herein, none of Public Company or its Affiliates has promised any such payments or owes a fiduciary duty or express or implied duty to the Participating Securityholders, (iv) except for the obligations of Public Company and the Surviving Company and the rights of the Securityholder Representative set forth herein, Public Company will have full management and operational authority to direct its and its Subsidiaries' business following the Closing with respect to all matters, may at any time change its and its Subsidiaries' operations and may take any and all other actions (or fail to take any action) that Public Company, in its judgment, shall deem advisable or in its best interest, and, except for the obligations of Public Company and the Surviving Company set forth herein, will in no event be under any obligation to achieve any Milestone or the FDA Approval or to maximize the Milestone Payments, number of Contingent Shares or PRV Proceeds or minimize the Contingent Expenses; *provided*, that Public Company shall not, and shall cause the Surviving Company and each of their respective Subsidiaries not to, intentionally take or intentionally omit to take any actions with respect to the conduct of the Surviving Company's business for the primary purpose of prejudicing the Participating Securityholders' right to receive the Contingent Shares, Milestone Payments or PRV Interest, or the amount of any of the foregoing, (v) the rights to receive Contingent Shares, Milestone Payments or PRV Interest payments are not investments in Public Company, the Surviving Company or any of their respective Affiliates, shall not be represented by any form of certificate or other instrument, and the Participating Securityholders shall not have any additional rights as a securityholder of Public Company, the Surviving Company or any of their respective Affiliates as a result of such contingent rights and (vi) any assignment or transfer of the right to receive the Contingent Shares or Milestone Payments to a Person in violation of Section 9.7 shall be null and void.

9.7 Designation of Permitted Alternative Payee.

(a) Public Company acknowledges that each of the Participating Securityholders may instruct the Securityholder Representative to designate a Permitted Alternative Payee, other than an Excluded Alternative Payee, to receive all or a portion of such Participating Securityholder's Allocable Share of any consideration owed pursuant to this Article IX, which the Securityholder Representative shall reflect on the applicable Milestone Payment Allocation Schedule, Contingent Shares Allocation Schedule or PRV Interest Allocation Schedule (each an "Allocation Schedule"). No such designation shall (x) confer upon any Permitted Alternative Payee any right or claim against Public Company, the Surviving Company or any of their respective Affiliates, (y) make any Permitted Alternative Payee a party to, or a third-party beneficiary of, this Agreement, or (z) entitle any Permitted Alternative Payee to any notice, information, audit, dispute or enforcement right hereunder, each of which shall remain exercisable solely by the Securityholder Representative.

(b) If any portion of the consideration owed pursuant to this Article IX is to be issued or paid to a Permitted Alternative Payee, it shall be a condition to such payment that (i) the Securityholder Representative shall include on the Allocation Schedule a true and correct list of the Affiliates of such Permitted Alternative Payee, (ii) the Securityholder Representative shall provide any other information reasonably requested by Public Company in order to determine whether any party listed on such Allocation Schedule is an Excluded Alternative Payee, (iii) the Permitted Alternative Payee requesting such payment shall pay to the Exchange Agent any transfer or other Taxes required as a result of such payment to a Permitted Alternative Payee or establish to the reasonable satisfaction of the Exchange Agent that such Tax has been paid or is not payable and (iv) the Permitted Alternative Payee shall deliver all withholding and other Tax forms reasonably requested by Public Company or the Exchange Agent. Public Company shall notify the Securityholder Representative in writing, within ten (10) Business Days after delivery of the applicable Allocation Schedule, if it reasonably believes any designated Permitted Alternative Payee is an Excluded Alternative Payee, specifying the basis therefor, and Public Company shall not be required to pay any consideration otherwise payable to such Excluded Alternative Payee. Following a timely notice by Public Company, the applicable Participating Securityholder may, by instruction to the Securityholder Representative within ten (10) Business Days, designate a substitute Permitted Alternative Payee on a revised Allocation Schedule. If no substitute is timely designated by the Participating Securityholder or Public Company timely objects to the substitute, then the affected consideration shall instead be issued or paid to such Participating Securityholder, and Public Company shall not delay, withhold or set off any other consideration payable under this Article IX by reason of such notice.

(c) Notwithstanding Section 9.6(vi), any Participating Securityholder may pledge, grant a security interest in, or collaterally assign its right to receive Contingent Shares, Milestone Payments or PRV Interest to any Person that is not an Excluded Alternative Payee, and the Securityholder Representative may reflect on an Allocation Schedule a direction to remit all or any portion of such Participating Securityholder's Allocable Share to an account designated by such Person, which payment shall discharge Public Company's obligations in respect thereof. No such pledge, grant or collateral assignment shall (i) confer upon such Person any right or claim against Public Company, the Surviving Company or any of their respective Affiliates, (ii) make such Person a party to, or a third-party beneficiary of, this Agreement, or (iii) entitle such Person to any notice, information, audit, dispute or enforcement right hereunder, each of which shall remain exercisable solely by the Securityholder Representative.

9.8 Adjustments to Contingent Consideration. Notwithstanding anything to the contrary contained in this Agreement, prior to the payment of the PRV Proceeds or any Milestone Payment (each, a "Contingent Cash Payment"), the amount and composition of such Contingent Cash Payment will be adjusted as set forth below (subject to Section 9.4).

(a) No less than thirty (30) days prior to the date that any Contingent Cash Payment is required to be paid hereunder (each, a "Calculation Date"), Public Company shall, in consultation with the Tax Advisor, determine the Total Stock Consideration Percentage if such Contingent Cash Payment were to be paid in cash. Subject to Section 9.4 and Section 9.8(c), if such Total Stock Consideration Percentage is less than the Reorganization Threshold, then the portion of such Contingent Cash Payment that would be required to be paid in Public Company Common Stock for the Total Stock Consideration Percentage to equal the Reorganization Threshold will be paid in Public Company Common Stock on a dollar for dollar basis, calculated in accordance with Section 9.8(b) (such Public Company Common Stock issued in lieu of cash, "Adjustment Contingent Shares").

(b) For purposes of determining the number of Adjustment Contingent Shares issued pursuant to Section 9.8(a) (but not, for the avoidance of doubt, for purposes of determining the value of such Adjustment Contingent Shares used for purposes of determining whether the Total Stock Consideration Percentage has been achieved), the value of the Adjustment Contingent Shares shall be calculated using the greater of the volume weighted average closing trading price of a share of Public Company Common Stock on the NYSE American for the twenty (20) consecutive trading days ending on the last trading day immediately prior to the Calculation Date and the Floor Price.

(c) Notwithstanding anything to the contrary in this Agreement, in no event shall the number of shares of Public Company Common Stock paid to Participating Securityholders pursuant to this Article IX exceed the Share Cap. If the number of Adjustment Contingent Shares required to be issued with respect to any Contingent Cash Payment would otherwise result in the Share Cap being exceeded, then the Adjustment Contingent Shares payable with respect to such Contingent Cash Payment shall be reduced to the maximum amount payable so as to not exceed the Share Cap. The parties hereto acknowledge and agree that the provisions of this Section 9.8 may result in the value of a Contingent Cash Payment being less than the amount otherwise payable pursuant to this Agreement.

(d) On the Calculation Date, Public Company shall prepare and deliver to the Securityholder Representative a written notice (a "Contingent Payment Adjustment Notice") setting forth (i) the Tax Advisor's calculation of the Total Stock Consideration Percentage as of the Calculation Date, (ii) the Adjustment Contingent Shares payable with respect to such Contingent Cash Payment and (iii) reasonable supporting documentation for the foregoing. Subject to Section 9.4, Public Company shall issue the Adjustment Contingent Shares on the applicable payment date of the Milestone Payment or the PRV Interest, and within five (5) Business Days after the delivery of a Contingent Payment Adjustment Notice, the Securityholder Representative shall prepare and deliver to Public Company and the Exchange Agent an updated Milestone Payment Allocation Schedule or PRV Interest Allocation Schedule, as applicable, in each case reflecting the allocation of Contingent Cash Payments and Adjustment Contingent Shares as set forth in the Contingent Payment Adjustment Notice (as finally determined pursuant to Section 9.4). Public Company shall be entitled, without any duty of inquiry or investigation, to rely on, and release (or cause to be released) Contingent Cash Payments and Adjustment Contingent Shares to the recipients set forth in such updated Milestone Payment Allocation Schedule or PRV Interest Allocation Schedule, and Public Company shall not be responsible for the calculations or determinations regarding such calculations set forth therein.

(e) Notwithstanding anything in this Agreement to the contrary, in the event that (i) the Securityholder Representative initiates a dispute pursuant to Section 9.4 with respect to a Contingent Payment Adjustment Notice, (ii) such dispute is resolved by the Accounting Firm in favor of the Securityholder Representative, and (iii) Public Company determines in good faith that, solely as a result of the resolution of such dispute, the Intended Tax Treatment is no longer supportable under applicable Law, Public Company shall (x) deliver written notice of such determination to the Securityholder Representative within thirty (30) days after such dispute is resolved by the Accounting Firm, and (y) participate in good faith discussions with the Securityholder Representative to agree to a mutually acceptable solution that preserves the Intended Tax Treatment; provided that if Public Company and the Securityholder Representative are unable to agree on such solution within thirty (30) days after Public Company provides the notice in clause (x) above, then Public Company shall be entitled to take a position contrary to the Intended Tax Treatment on its Tax Returns and in any Tax audit or proceeding.

ARTICLE X.
SURVIVAL AND INDEMNIFICATION

10.1 Survival of Representations, Warranties and Agreements. The parties hereto hereby agree that (a) the representations and warranties of Public Company and the Merger Subs contained in this Agreement will terminate at the Initial Effective Time, (b) the representations and warranties of Merger Partner contained in this Agreement shall survive the Closing until the second (2^{nd}) anniversary of the Closing Date, and (c) the covenants, obligations, and agreements in this Agreement shall survive the Closing in accordance with their respective terms and remain in full force and effect until such particular covenant, obligation, or agreement is fully performed or fulfilled as provided in this Agreement (each such date set forth in this Section 10.1, with respect to representations, warranties and covenants, being hereinafter referred to as an "Expiration Date"). No claim for a breach of representation, warranty or covenant may be brought by any party after the applicable Expiration Date; provided that if written notice of any claim for indemnification under this Article X has been properly and timely provided in accordance with this Agreement prior to the applicable Expiration Date, the indemnification claim shall survive until such claim is finally resolved.

10.2 Indemnification by Participating Securityholders. From and after the Closing, the Participating Securityholders shall, severally and not jointly, indemnify and hold harmless Public Company, its Affiliates, and their respective successors, assigns, officers, directors, and Representatives (each, a "Public Company Indemnified Party") from and against, and be liable to the Public Company Indemnified Parties for, any and all Losses incurred, suffered or sustained by, or imposed upon, any Public Company Indemnified Party arising out of, based upon, related to or resulting from:

(a) any breach or inaccuracy of any of the representations and warranties of Merger Partner set forth in Article III;

(b) any breach of, or failure to comply with or perform, any covenant, obligation, or agreement of Merger Partner, its Affiliates or the Securityholder Representative contained in this Agreement; and

(c) any matters arising out of any Action brought by any putative holder of Merger Partner Capital Stock and relating to a claim that (i) such Person is or was or should be a holder of Merger Partner Capital Stock or (ii) the Merger Partner Merger Shares, any Contingent Shares, any Milestone Payment or other amounts payable pursuant to this Agreement were not allocated or distributed in accordance with such Person's purported Allocable Share, applicable Law, the Organizational Documents of Merger Partner or any other applicable Contracts (such matters, "Consideration Matters").

10.3 Indemnification by Public Company. From and after the Closing, Public Company shall indemnify and hold harmless the Participating Securityholders (each, a "Merger Partner Indemnified Party") from and against, and be liable to the Merger Partner Indemnified Parties for, any and all Losses incurred, suffered or sustained by, or imposed upon, any Merger Partner Indemnified Party arising out of, based upon, related to or resulting from any breach of, or failure to comply with or perform, any covenant, obligation, or agreement of Public Company contained in this Agreement.

10.4 Indemnification Claims.

(a) For the avoidance of doubt, any claim by a Public Company Indemnified Party shall solely be made and administered by Public Company on behalf of the Public Company Indemnified Parties, and any claim by a Merger Partner Indemnified Party shall solely be made and administered by the Securityholder Representative on behalf of the Participating Securityholders (and any Merger Partner Indemnified Parties). Any Public Company Indemnified Party or Merger Partner Indemnified Party seeking indemnification under this Agreement (an "Indemnified Party") with respect to any claim asserted against the Indemnified Party by a third party ("Third-Party Claim") in respect of any matter that is subject to indemnification under Section 10.2 or Section 10.3, as applicable, shall (i) promptly notify Public Company or the Securityholder Representative (on behalf of the Participating Securityholders), as applicable (the "Indemnifying Party"), of the Third-Party Claim, and (ii) as promptly as practicable (and in any event within forty-five (45) days after receipt of notice of the commencement of such Third-Party Claim), transmit to the Indemnifying Party a written notice (a "Claim Notice") describing in reasonable detail the nature of the Third-Party Claim together with copies of all material written evidence thereof and the amount or the Indemnified Party's good faith estimate of any Losses expected to be incurred with respect thereto (if reasonably determinable). Notwithstanding the foregoing, the delay or failure to give the notice provided in, or in accordance with, this Section 10.4(a) will not relieve the Indemnifying Party of its obligations under this Article X, except to the extent such Indemnifying Party is actually materially prejudiced by such delay or failure.

(b) The Indemnifying Party shall have the right to assume the defense of such Third-Party Claim (except in the case of an Excluded Matter) with counsel selected by the Indemnifying Party (and reasonably acceptable to the Indemnified Party) by providing written notice to the Indemnified Party within forty-five (45) days after the Indemnifying Party's receipt of a Claim Notice that the Indemnifying Party elects to assume such defense. If the Indemnifying Party assumes the defense of a Third-Party Claim, the Indemnifying Party shall diligently pursue such defense and shall have the authority to negotiate, compromise and settle such Third-Party Claim; *provided*, *however*, that the Indemnifying Party shall not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), agree to any settlement that (i) does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Party of a full and unconditional release from all liability in respect of such Third-Party Claim, (ii) grants any injunctive or equitable relief against the Indemnified Party or any of its Affiliates, (iii) involves any finding or admission of any violation of Law or any wrongdoing by the Indemnified Party, (iv) involves any criminal liability of or the imposition of any criminal or quasi-criminal penalties against the Indemnified Party, or (v) imposes any obligations or restrictions on the conduct of the Indemnified Party or any of its Affiliates other than the payment of money damages that would be borne solely by the Indemnifying Party. The Indemnified Party may participate in, but not control, any defense or settlement of any Third-Party Claim controlled by the Indemnifying Party pursuant to this Section 10.4(b), and the Indemnified Party shall bear its own costs and expenses with respect to such participation unless, in the reasonable judgment of the Indemnified Party, there is a conflict of interest (including the availability to the Indemnified Party of one or more defenses that are not available to the Indemnifying Party) that would prevent the same counsel from representing both the Indemnified Party and the Indemnifying Party, in which case the Indemnified Party shall be entitled to retain one separate counsel, the reasonable costs and expenses of which shall be borne by the Indemnifying Party. Notwithstanding the foregoing, if a Third-Party Claim (A) seeks non-monetary relief which, if granted, could adversely affect the Indemnified Party or its Affiliates and that the Indemnified Party reasonably determines, after conferring with its outside counsel, cannot be readily separated from any related claim for money damages (*provided*, that if such equitable relief or other relief portion of the Third-Party Claim can be so separated from that for money damages, the Indemnifying Party shall be entitled to assume the defense of the portion relating to money damages), (B) involves a criminal proceeding, or (C) in the event that any Public Company Indemnified Party is the Indemnified Party, involves any matter that could reasonably be expected to have an adverse impact on Public Company's business (each, an "Excluded Matter"), then, in each case, the Indemnified Party shall have the right to defend the applicable Third-Party Claim in accordance with Section 10.4(c) below. For purposes of this Section 10.4(b), if a Participating Securityholder is the Indemnifying Party or the Indemnified Party, such references shall be deemed to refer to the Securityholder Representative acting on behalf of the Participating Securityholders.

(c) In the event of an Excluded Matter, or if the Indemnifying Party does not assume the defense of such Third-Party Claim pursuant to Section 10.4(b) within forty-five (45) days after receipt of any Claim Notice (or notifies the Indemnified Party within such time period that it elects not to assume the defense of such Third-Party Claim), or assumes such defense but thereafter fails to diligently pursue such defense, then, in each such instance, the Indemnified Party shall have the right to defend against the applicable Third-Party Claim and shall be reimbursed for its reasonable cost and expense (including reasonable attorneys' fees) in regard to such Third-Party Claim with counsel selected by the Indemnified Party in all appropriate proceedings. In such circumstances, or in the case of an Excluded Matter, the Indemnified Party shall defend any such Third-Party Claim in good faith and have full control of such defense and proceedings; *provided*, *however*, that the Indemnified Party may not enter into any compromise or settlement of such Third-Party Claim if indemnification is to be sought hereunder without the Indemnifying Party's consent (which consent shall not be unreasonably withheld, conditioned or delayed). The Indemnifying Party may participate in, but not control, any defense or settlement controlled by the Indemnified Party pursuant to this Section 10.4(c), and the Indemnifying Party shall bear its own costs and expenses with respect to such participation. For purposes of this Section 10.4(c), if a Participating Securityholder is the Indemnifying Party or the Indemnified Party, such references shall be deemed to refer to the Securityholder Representative acting on behalf of the Participating Securityholders.

(d) A claim for indemnification for any matter not involving a Third-Party Claim (a "Direct Claim") shall be asserted by written notice (a "Direct Claim Notice") to the applicable Indemnifying Party as promptly as practicable after the date on which the Indemnified Party becomes aware of facts giving rise to the Direct Claim, which notice shall describe in reasonable detail the nature of the Direct Claim and shall include, to the extent estimable, a reasonable estimate of the Losses expected to be incurred with respect thereto. Notwithstanding the foregoing, the delay or failure to give the notice provided in, or in accordance with, this Section 10.4(d) shall not relieve the Indemnifying Party of its obligations under this Article X, except to the extent such Indemnifying Party is actually materially prejudiced by such delay or failure. For purposes of this Section 10.4(d), if a Participating Securityholder is the Indemnifying Party or the Indemnified Party, such references shall be deemed to refer to the Securityholder Representative acting on behalf of the Participating Securityholders.

(e) The Indemnifying Party shall notify the Indemnified Party within the thirty (30)-day period after its receipt of such Direct Claim Notice as to whether the Indemnifying Party disputes its liability to the Indemnified Party with respect to the Direct Claim described in the Direct Claim Notice (such notice of dispute, a "Direct Claim Dispute Notice"). If the Indemnifying Party does not timely deliver a Direct Claim Dispute Notice, the Indemnifying Party shall be deemed to have accepted and agreed to indemnify the Indemnified Party from and against the Direct Claim described in the Direct Claim Notice. If the Indemnifying Party has timely delivered a Direct Claim Dispute Notice, the Indemnifying Party and the Indemnified Party shall proceed in good faith to negotiate a resolution to such dispute. If the Indemnifying Party and the Indemnified Party cannot resolve such dispute within thirty (30) days after delivery of a Direct Claim Dispute Notice, such dispute shall be resolved in accordance with Sections 11.11 through 11.14. For purposes of this Section 10.4(e), if a Participating Securityholder is the Indemnifying Party or the Indemnified Party, such references shall be deemed to refer to the Securityholder Representative acting on behalf of the Participating Securityholders.

10.5 Limitations. Notwithstanding anything to the contrary herein:

(a) Neither the Public Company Indemnified Parties nor the Merger Partner Indemnified Parties shall be entitled to any indemnification pursuant to Section 10.2 or Section 10.3, as applicable, (i) with respect to any Losses arising out of or resulting from any single matter or group of related matters that would otherwise be indemnifiable pursuant to Section 10.2 or Section 10.3 unless and until such Losses exceed an amount equal to Fifty Thousand Dollars ($50,000.00) (such Losses, the "De Minimis Threshold"); *provided*, *however*, that Losses not exceeding the De Minimis Threshold shall not be aggregated for purposes of calculating the Threshold; or (ii) unless and until the aggregate amount of all Losses (excluding Losses not exceeding the De Minimis Threshold) exceeds an amount equal to One Million Two Hundred Thousand Dollars ($1,200,000.00) (such amount, the "Threshold"), at which point the applicable Indemnified Party shall be entitled to recover all such indemnifiable Losses, subject to the other limitations set forth in this Article X;

(b) Public Company's aggregate Liability under Section 10.3 shall not exceed $5,000,000, subject to the exceptions in Section 10.6;

(c) the Participating Securityholders' aggregate Liability pursuant to Section 10.2 shall be limited to the Escrow Shares, except in the case of Fraud or the Consideration Matters. For purposes of determining the value of the shares of Public Company Common Stock under this Section 10.5, such Escrow Shares or other shares of Public Company Common Stock shall be valued at the volume weighted average closing trading price of a share of Public Company Common Stock at the 4:00 p.m., Eastern time, end of regular trading hours on the NYSE American for the twenty (20) consecutive trading days ending on the last trading day immediately prior to the date on which the applicable indemnification obligation is finally resolved;

(d) no Indemnifying Party shall have any Liability for, and Losses will not include, any punitive Losses, except to the extent any such Losses are awarded and paid with respect to a Third-Party Claim;

(e) the amount of any Loss for which an Indemnified Party is entitled to indemnification under this Article X shall be determined without duplication of recovery by reason of the same facts or circumstances giving rise to such Loss constituting a breach of more than one representation, warranty, covenant or agreement or otherwise giving rise to more than one indemnifiable matter;

(f) to the extent required by applicable Law, each Indemnified Party shall, and shall cause its Affiliates (including, in the case of the Public Company Indemnified Parties, the Surviving Company and its Subsidiaries) to, use commercially reasonable efforts to mitigate any Losses indemnifiable under this Article X after becoming aware of any event that gives rise to, or could reasonably be expected to give rise to, any such Losses; and

(g) the amount of any Losses subject to indemnification under Section 10.2 or Section 10.3 shall be calculated net of (i) any insurance proceeds and (ii) any indemnification payments from any third party, in each case, actually received by the Indemnified Party on account of such Losses (net of any applicable costs of recovery, including any resulting increase in insurance premiums attributable thereto). Each Indemnified Party shall use commercially reasonable efforts to seek recovery under all insurance policies covering any Loss; *provided* that the pursuit or receipt of any insurance recovery shall not be a condition or prerequisite to making a claim or recovering under the indemnities set forth in this Article X. If any Indemnified Party receives any insurance or other recovery with respect to any Loss for which such Indemnified Party has previously received an indemnification payment under this Article X, then such Indemnified Party shall, promptly (and in any event within five (5) Business Days) following receipt of such recovery, pay an amount equal to the lesser of (A) the amount of such recovery (net of all attorneys' fees, expenses and other costs of recovery, including any applicable deductible and any resulting increase in insurance premiums attributable thereto) and (B) the amount of such indemnification payment, (x) in the case of a recovery by a Public Company Indemnified Party, to the Securityholder Representative for distribution to the Participating Securityholders in accordance with Section 2.2, or (y) in the case of a recovery by a Merger Partner Indemnified Party, to Public Company.

10.6 Exclusive Remedy. From and after the Closing, the sole and exclusive remedy for any and all claims, Losses or other matters arising out of, under, or related to this Agreement shall be the rights of indemnification set forth in this Article X, and no Person shall have any other entitlement, remedy, or recourse, whether in Contract, tort, strict liability, or otherwise. Notwithstanding the balance of this Section 10.6 or any other provision of this Agreement to the contrary (including, without limitation, any limitations on remedies, indemnification caps, deductibles, or exclusive remedy provisions contained herein): (a) in the event Public Company fails to timely pay or deliver the Contingent Shares, any Milestone Payments or the PRV Interest after such number of Contingent Shares or the amount to be paid, as the case may be, has been finally determined to be issuable or payable under this Agreement and (b) such failure (i) remains uncured for two (2) Business Days after Public Company's receipt of written notice thereof from the Securityholder Representative and (ii) is not the result of a good faith dispute by Public Company as to the amount payable or number of Contingent Shares deliverable, or as to Public Company's right to set off or withhold any amount, in each case, as permitted by this Agreement, the Securityholder Representative shall have the right to pursue any and all actions, remedies, or recourses available at law or in equity against Public Company to enforce such payment or delivery or to recover damages resulting from such failure. This Section 10.6 shall not operate to interfere with or impede the operation of the covenants contained in this Agreement that by their nature are required to be performed after the Closing, or with respect to a party's right to seek equitable remedies (including specific performance or injunctive relief). Notwithstanding anything to the contrary herein, and for the avoidance of doubt, the procedures set forth in Section 9.4 shall not apply to the resolution of disputes related to Public Company's failure to timely deliver Contingent Shares, pay Milestone Payments or pay PRV Interest after the number of Contingent Shares deliverable, Milestone Payment(s) due, or PRV Interest due, as the case may be, have been finally determined.

10.7 Determination of Losses. Notwithstanding anything to the contrary in this Agreement, from and after the Closing, for purposes of determining whether there has been a breach and the amount of any Losses suffered by an Indemnified Party that are the subject matter of a claim for indemnification hereunder, each representation, warranty, covenant, obligation, and agreement in this Agreement and any certificate or document delivered pursuant hereto shall be read without regard and without giving effect to the term(s) "material", "Merger Partner Material Adverse Effect", or other similar qualifications as to materiality, as if such words and surrounding related words (*e.g.*, "reasonably be expected to", and similar restrictions and qualifiers) were deleted from such representation, warranty, covenant, obligation, or agreement, except to the extent it qualifies an affirmative requirement to list specified items on the Merger Partner Disclosure Schedule or the Public Company Disclosure Schedule.

10.8 Right to Indemnification Not Affected by Knowledge. The right to indemnification and payment of Losses based on any breach of representations, warranties or covenants will not be affected by any investigation conducted, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation or warranty or covenant. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, payment of Losses, or other remedy based on such representations, warranties, covenants and obligations.

10.9 Deposit of Escrow Shares. At the Initial Effective Time, Public Company shall deposit with the Exchange Agent (in such capacity, the "Escrow Agent"), for the benefit of the Participating Securityholders, the Escrow Shares in the Escrow Account for release in accordance with Section 10.12.

10.10 Reduction of Escrow Shares. Subject to Section 10.11, any claim for which a Public Company Indemnified Party is entitled to indemnification pursuant to Section 10.2 shall be satisfied by release from the Escrow Account of a number of Escrow Shares equal in value (based on the Escrow Share Value determined as of the date of such release) to the amount of the Losses owed by the Participating Securityholders in respect of such claim, such release to occur within five (5) Business Days after the final determination of such Losses in accordance with Section 10.4. For purposes of this Agreement, "Escrow Share Value" means, as of any date of determination, the volume weighted average closing trading price of a share of Public Company Common Stock at the 4:00 p.m., Eastern time, end of regular trading hours on the NYSE American for the twenty (20) consecutive trading days ending on the last trading day immediately prior to such date of determination.

10.11 Set-Off Rights. Notwithstanding anything to the contrary in this Agreement, Public Company shall have the right to set off, retain, withhold, or otherwise reduce any Milestone Payment, Contingent Shares, PRV Interest, or any other amounts issuable or payable to the Participating Securityholders pursuant to this Agreement on account of any Losses to which a Public Company Indemnified Party is entitled in respect of the Consideration Matters or Fraud so long as (i) Public Company has obtained a final, non-appealable judgment of a court of competent jurisdiction related to the Loss, (ii) the Securityholder Representative has otherwise agreed in writing to the set-off, or (iii) such Loss is claimed in good faith by Public Company or any other Public Company Indemnified Party under this Agreement and such claim remains pending and unresolved as of the date any such payment would otherwise become payable under this Agreement, provided, that Public Company shall pay any remaining withheld amount (which is not set off against such Loss) to the Securityholder Representative for distribution to Participating Securityholders following the final resolution of such pending claim. For purposes of any set-off against Contingent Shares, each share of Public Company Common Stock shall be valued at the Public Company Post-Closing Price.

10.12 Release of Escrow Shares. On the fifth (5^{th}) Business Day following the second (2^{nd}) anniversary of the Closing Date, in the event that any Escrow Shares remain in the Escrow Account, Public Company shall prepare and deliver, or cause to be prepared and delivered, a written notice to the Exchange Agent instructing the Exchange Agent to release one hundred percent (100%) of the Escrow Shares then held in the Escrow Account and the identity of the Persons to whom the Escrow Shares shall be released; *provided*, *however*, that if any claim shall have been properly asserted by any Public Company Indemnified Party in accordance with this Agreement on or prior to the second (2^{nd}) anniversary of the Closing Date and such claim remains pending (any such claim, a "Pending Claim"), (i) the Escrow Shares released to the Participating Securityholders shall be reduced by a number of Escrow Shares equal to the amount of any such Pending Claim divided by the Escrow Share Value and (ii) the Escrow Shares retained on account of any such Pending Claim(s) shall be released to the Participating Securityholders promptly upon resolution or (if applicable) satisfaction of such Pending Claim.

10.13 Equitable Adjustments to Escrow Shares. In the event of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to Public Company Common Stock or Public Company Preferred Stock occurring after the Initial Effective Time, all references herein to specified numbers of Escrow Shares, and all calculations provided for that are based upon numbers of shares of any class or series (or prices therefor) affected thereby, shall be equitably adjusted to the extent necessary to provide the parties the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change.

10.14 Merger Partner Merger Share Adjustment. Any amounts payable under Section 10.2 or Section 10.3 shall constitute an adjustment to the number of Merger Partner Merger Shares for Tax reporting purposes and all other purposes to the fullest extent permitted by applicable Law.

ARTICLE XI.
MISCELLANEOUS

11.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (i) three (3) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, (ii) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable overnight courier service, (iii) on the date transmitted by e-mail (provided that no "bounce back" or similar message of non-delivery is received with respect thereto), or (iv) on the date personally delivered to an authorized officer of the party to which sent, in each case, to the intended recipient as set forth below:

(a) if to Public Company or any Merger Sub, to:

Pelthos Therapeutics Inc.
4020 Stirrup Creek Drive, Suite 110
Durham, NC 27703
Attention: Chief Executive Officer; Chief Financial Officer

with a copy (which shall not constitute notice) to:
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Leah Sauter; Kyle Adams
Email: [***]; [***]

(b) if to Merger Partner, to:

Castle Creek Biosciences, Inc.
330 N. Wabash Ave Suite 3500
Chicago, IL 60611
Attention: Chief Executive Officer
Email: [***]

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

Castle Creek Biosciences, Inc.
330 N. Wabash Ave Suite 3500
Chicago, IL 60611
Attention: Jude M. Sullivan
Email: [***]

and

Bradley Arant Boult Cummings LLP
1445 Ross Avenue Suite 3600
Dallas, TX 75202
Attention: Gregory Hidalgo
E-mail: [***]

(c) if to Securityholder Representative:

Paragon Biosciences, LLC
330 N. Wabash Avenue, Suite 3500
Chicago Illinois 60611
Attention: Patrick J. Morris
E-mail: [***]

Any party to this Agreement may give any notice or other communication hereunder using any other means (including personal delivery, messenger service, ordinary mail or electronic mail), but no such notice or other communication shall be deemed to have been duly given unless and until it actually is received by the party for whom it is intended (provided a transmission by e-mail shall be deemed to be received if the sender transmits the e-mail to the correct address set forth above and no "bounce back" or similar message of non-delivery is received with respect thereto). Any party to this Agreement may change the address to which notices and other communications hereunder are to be delivered by giving the other parties to this Agreement notice in the manner set forth in this Section 11.1.

11.2 Entire Agreement. This Agreement (including the Schedules, Annexes and Exhibits hereto and the documents and instruments referred to herein that are to be delivered at the Closing) constitutes the entire agreement among the parties to this Agreement and supersedes any prior understandings, agreements or representations by or among the parties hereto, or any of them, written or oral, with respect to the subject matter hereof and the parties hereto expressly disclaim reliance on any such prior understandings, agreements or representations to the extent not embodied in this Agreement. Notwithstanding the foregoing, (a) the Confidentiality Agreement shall remain in effect in accordance with its terms and (b) the Public Company Disclosure Schedule and the Merger Partner Disclosure Schedule shall not, pursuant to Section 268(b) of the DGCL, be deemed part of this Agreement for purposes of any provision of the DGCL, but shall have the effects provided in this Agreement.

11.3 Amendment. Subject to applicable Law and Section 6.8(e) (D&O Indemnification), this Agreement may be amended with the approval of the Public Company Board and the Merger Partner Board, at any time prior to the Initial Effective Time (whether before or after obtaining the Public Company Written Consent or the Merger Partner Written Consent); *provided*, *however*, that after the Public Company Written Consent or the Merger Partner Written Consent has been obtained, no amendment to this Agreement may be made without the further approval of the stockholders of Public Company or Merger Partner, as applicable, if such further approval is required by Law. This Agreement may not be amended except by an instrument in writing signed (a) prior to the Initial Effective Time, on behalf of each of Public Company and Merger Partner, and (b) from and after the Initial Effective Time, on behalf of each of Public Company and the Securityholder Representative.

11.4 Extension; Waiver. Public Company may (a) extend the time for the performance of any of the obligations or other acts of Merger Partner set forth herein, (b) waive any inaccuracies in the representations and warranties of Merger Partner set forth herein or (c) waive compliance by Merger Partner with any of the agreements or conditions set forth herein. Merger Partner may (i) extend the time for the performance of any of the obligations or other acts of Public Company or any of its Subsidiaries set forth herein, (ii) waive any inaccuracies in the representations and warranties of Public Company or any of its Subsidiaries set forth herein or (iii) waive compliance by Public Company or any of its Subsidiaries with any of the agreements or conditions set forth herein. From and after the Initial Effective Time, the Securityholder Representative shall exercise the rights of Merger Partner under clauses (i) through (iii) above. Any agreement on the part of any such party to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of such rights.

11.5 Procedure for Termination, Amendment, Extension or Waiver. A termination of this Agreement pursuant to Section 8.1, an amendment, modification or supplement of this Agreement pursuant to Section 11.3 or an extension or waiver of this Agreement pursuant to Section 11.4 shall, in order to be effective, require action by the respective boards of directors of the applicable parties (including pursuant to any delegation of authority by the respective boards of directors); *provided*, that from and after the Initial Effective Time, no action by any board of directors shall be required in respect of any amendment, extension or waiver effected by the Securityholder Representative pursuant to Section 11.3 or Section 11.4.

11.6 Assignment. Other than as set forth in Section 9.7, no party may assign any of its rights or delegate any of its performance obligations under this Agreement, in whole or in part, by operation of Law or otherwise without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment of rights or delegation of performance obligations in violation of this Section 11.6 is void.

11.7 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

11.8 Changes of Control; Successor Assumption Covenant.

(a) Following the Closing and until all Article IX Obligations have been satisfied in full, if a Change of Control occurs, in each case, which does not result, directly or indirectly, in an assumption by a Qualified Acquiror of Public Company's obligations pursuant to this Agreement as a matter of Law or by operation of law, Public Company shall, as a condition precedent to the consummation thereof, cause the Qualified Acquiror to assume in writing the obligations under Article IX and this Section 11.8 on substantially the same terms as set forth herein. If the Qualified Acquiror does not have any class of equity securities that are listed on any of the New York Stock Exchange, Nasdaq Stock Market, NYSE American or another national or international securities exchange, Public Company shall instead cause the Qualified Acquiror to assume the obligations under Section 9.2 in a manner that requires the Qualified Acquiror, upon the Contingent Shares becoming issuable pursuant to Section 9.2, to pay to the Participating Securityholders cash in lieu of any portion of the Contingent Consideration Equivalent which is payable in any form other than cash. Such cash portion shall be determined by multiplying (x) the number of Contingent Shares that would have been issuable had FDA Approval been received by Public Company immediately prior to the consummation of such Change of Control, by (y) the price per share of Public Company Common Stock implied by the purchase price in the Change of Control transaction. Notwithstanding any other provision of this Section 11.8 or this Agreement, (i) Public Company shall not consummate a Change of Control unless the COC Acquiror is a Qualified Acquiror and (ii) Public Company shall not enter into any agreement which will result in a Change of Control without the consent of the Securityholder Representative (not to be unreasonably withheld, conditioned or delayed) if, solely as a result of such transaction, the qualification of the Mergers for the Intended Tax Treatment is adversely affected; provided, however, that the consent of the Securityholder Representative shall not be required if (A) immediately prior to the consummation of such Change of Control transaction, Public Company is no longer bound by the Intended Tax Treatment pursuant to Section 1.8(a) or Section 9.8(e), or (B) pursuant to such Change of Control, the Participating Securityholders receive cash in lieu of all payments to be made pursuant to Article IX which are otherwise payable in any form other than cash.

(b) Treatment of Escrow Shares in Change of Control. Upon consummation of any Change of Control occurring prior to the release of all Escrow Shares pursuant to Section 10.12:

(i) all Escrow Shares then remaining in the Escrow Account shall automatically convert into the right to receive, upon release pursuant to Section 10.12, consideration of the same type and in the same amount per share as the Contingent Consideration Equivalent payable to holders of Public Company Common Stock in such Change of Control (such converted consideration, the "Escrow COC Consideration");

(ii) any Escrow Shares retained on account of a Pending Claim at the time of such Change of Control shall be converted to the Escrow COC Consideration and continue to be held by the Escrow Agent (or such successor escrow agent as may be designated in connection with such Change of Control) pending resolution of such Pending Claim, and upon final resolution or satisfaction thereof, any remaining Escrow COC Consideration attributable to such Pending Claim shall be released to the Participating Securityholders in accordance with their respective Allocable Shares; and

(iii) in connection with any Change of Control, the Qualified Acquiror shall deposit with the Escrow Agent (or any successor escrow agent) cash or other consideration in an amount sufficient to satisfy all of Public Company's then-outstanding obligations with respect to Escrow Shares under Section 10.10.

(c) Public Company shall deliver written notice to the Securityholder Representative not less than ten (10) Business Days prior to the consummation of any Change of Control, which notice shall (i) identify the COC Acquiror, (ii) state the basis on which the COC Acquiror constitutes a Qualified Acquiror and (iii) state whether the obligations under Article IX and this Section 11.8 will be assumed by the COC Acquiror by operation of Law or pursuant to a written assumption agreement; provided, that if a proxy statement or information statement that includes the information in clauses (i) and (ii) above is provided to the stockholders of Public Company in connection with such Change of Control, the delivery by Public Company to the Securityholder Representative of an electronic copy of such proxy statement or information statement not less than ten (10) Business Days prior to the consummation of such Change of Control shall satisfy all written notice requirements set forth in this sentence. If such obligations are to be assumed pursuant to a written assumption agreement, Public Company shall deliver a draft thereof to the Securityholder Representative not less than five (5) Business Days prior to execution and shall consider in good faith any comments reasonably provided by the Securityholder Representative. Public Company shall deliver to the Securityholder Representative a copy of any such executed assumption agreement, and evidence of any deposit required by Section 11.8(b)(iii), promptly following execution or deposit, as applicable. The Securityholder Representative shall be an express third-party beneficiary of each such assumption agreement, entitled to enforce the obligations assumed thereunder directly against the COC Acquiror.

11.9 Counterparts and Signature. This Agreement and any signed agreement or instrument entered into in connection with this Agreement may be executed in two or more counterparts (including by facsimile or by an electronic scan delivered by electronic mail), each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. To the extent signed and delivered by means of a facsimile machine, by email delivery of a ".pdf" or ".jpg" format data file or by any electronic signature complying with the U.S. federal ESIGN Act of 2000, this Agreement shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine, email delivery of a ".pdf" or ".jpg" format data file or electronic signature complying with the U.S. federal ESIGN Act of 2000 to deliver a signature to this Agreement or any amendment hereto or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine, email delivery of a ".pdf" or ".jpg" format data file or by any electronic signature complying with the U.S. federal ESIGN Act of 2000 as a defense to the formation of a contract and each party hereto forever waives any such defense.

11.10 Interpretation. When reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or Section of this Agreement, unless otherwise indicated. The Exhibits and Annexes attached to this Agreement shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth herein. The table of contents, table of defined terms and headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa. Any reference to any federal, state, local or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise, and any definition of or reference to any Law shall be construed as referring to such Law as amended, supplemented, modified or replaced from time to time. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." As used in this Agreement, (i) the word "extent" in the phrase "to the extent" means the degree, if any, to which a subject or thing extends, and such phrase shall not mean simply "if," (ii) except when used together with the word "either" or otherwise for the purpose of identifying mutually exclusive alternatives, the word "or" shall have the inclusive meaning represented by the phrase "and/or," and (iii) where this Agreement states that a party "shall," "will" or "must" perform in some manner (or refrain from taking some action), it means that such party is legally obligated to do so under this Agreement. All references in this Agreement to "days" shall be deemed to refer to calendar days unless Business Days are specified. References to "dollars," "Dollars" and "$" shall be references to United States Dollars. Any definition of or reference to any contract or agreement shall be construed as referring to such contract or agreement as from time to time amended, restated, supplemented or otherwise modified in accordance with its terms (subject to any restrictions on such amendments set forth herein). Any definition of or reference to any Person shall be construed to include such Person's predecessors-in-interest, successors and permitted assigns (subject to any restrictions on assignment set forth herein). As used in this Agreement, the phrase "date hereof" or "date of this Agreement" shall refer to the date set forth in the preamble to this Agreement. Where this Agreement refers to information that was "made available", that means that such information was either (i) provided directly to Public Company or Merger Partner, as applicable, by the other party, with confirmation of receipt, (ii) included in the virtual data rooms established by Public Company and Merger Partner created for the purposes of providing information to the other party in connection with this Agreement at least one (1) Business Day prior to the execution and delivery of this Agreement or (iii) solely with respect to information made available by Public Company, filed with and publicly available on the SEC's EDGAR at least one (1) Business Day prior to the date of this Agreement. When used in this Agreement, "Person" shall mean any natural person, corporation, exempted company, limited liability company, partnership, exempted limited partnership, association, joint venture, trust, or other entity or business association. The parties are each represented by legal counsel and have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. No amount shall be counted, in whole or in part (whether as an increase or reduction), more than once in the calculation of the Merger Partner Merger Shares, Contingent Shares, Milestone Payments, or any other component of merger consideration (including such that no amount included in the calculation of one component shall also be included in the calculation of any other component).

11.11 Governing Law. This Agreement and all matters, claims, counterclaims, or causes of action (whether in contract, tort, statute, or otherwise) arising out of or relating to this Agreement and the transactions contemplated hereby (including its interpretation, construction, performance and enforcement), or the actions of any party in the negotiation, administration, performance, or enforcement of this Agreement (collectively, "Relevant Matters") shall be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of Law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdictions other than those of the State of Delaware. For the avoidance of doubt, all matters relating to the internal affairs of Public Company (including the fiduciary duties of its directors and officers) shall be governed by the internal Laws of the State of Nevada without giving effect to any choice or conflict of Law provision or rule (whether of the State of Nevada or any other jurisdiction) that would cause the application of Laws of any jurisdictions other than those of the State of Nevada.

11.12 Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties agree that irreparable damage may occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof or were otherwise breached and that each party shall be entitled to seek an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the provisions of this Agreement (without any requirement to post any bond or other security in connection with seeking such relief), in addition to any other remedy at Law or equity.

11.13 Submission to Jurisdiction. Each of the parties to this Agreement (i) consents to submit itself to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, New Castle County, or, if that court does not have jurisdiction, a state or federal court sitting in Wilmington, Delaware in any action or proceeding arising out of or relating to any Relevant Matter, (ii) agrees that all claims in respect of such action or proceeding shall be heard and determined in any such court, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (iv) agrees not to bring any action or proceeding arising out of or relating to any Relevant Matter in any other court. Each of the parties hereto waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto. Any party may make service on another party by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 11.1. Nothing in this Section 11.13, however, shall affect the right of any party to serve legal process in any other manner permitted by Law.

11.14 WAIVER OF JURY TRIAL. EACH OF PUBLIC COMPANY, THE MERGER SUBS, THE SECURITYHOLDER REPRESENTATIVE AND MERGER PARTNER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY RELEVANT MATTER. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY HERETO WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.14.

11.15 No Third-Party Beneficiaries

. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than Merger Partner, Public Company, Merger Sub, Merger Sub II and the Persons specified in Section 6.8, Section 6.17, Article X and Section 11.8(c)) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

11.16 Disclosure Schedule. The information contained in each of the Merger Partner Disclosure Schedule and the Public Company Disclosure Schedule (each, a "Disclosure Schedule") constitutes exceptions and listings to the representations and warranties of the parties hereto set forth herein, and shall be deemed to qualify such representations and warranties for all purposes. Any capitalized terms used in a Disclosure Schedule shall have the meanings set forth in this Agreement. Any sections of a Disclosure Schedule that are marked "None" indicate that the applicable party has no exceptions with regard to such representations and warranties. To the extent a statement of fact or the occurrence of any event is described in a Disclosure Schedule for purposes of qualifying a representation, warranty, or covenant, the existence of such a state of facts or the occurrence of such event shall not be deemed by any third party to constitute a breach of such representation, warranty, or covenant. Nothing in a Disclosure Schedule shall constitute an admission of any liability or obligation of any party hereto to any third party, or an admission to any third party against the interests of any party hereto. Each Disclosure Schedule is qualified by reference to specific provisions of this Agreement. Headings have been inserted in the Disclosure Schedules for convenience of reference only and shall not have the effect of amending or changing the express description of the sections as set forth in this Agreement. Each Disclosure Schedule has been arranged in sections corresponding to those set forth in this Agreement, as applicable, and the disclosure in any section shall qualify only (i) the corresponding section of this Agreement and (ii) the other sections of this Agreement, to the extent that the relevance of such item to such representations and warranties is reasonably apparent on the face of such disclosure, notwithstanding the presence or absence of a cross reference thereto. The inclusion of any information in a Disclosure Schedule shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms hereof to be disclosed, is material, has resulted in or would result in a Merger Partner Material Adverse Effect or a Public Company Material Adverse Effect, as applicable, or is outside the Ordinary Course of Business.

11.17 Securityholder Representative.

(a) The Participating Securityholders, by the adoption of this Agreement and acceptance of consideration under this Agreement, shall be deemed to have designated the Securityholder Representative as the representative, exclusive agent and true and lawful attorney-in-fact of the Participating Securityholders, effective as of the Closing.

(b) The Securityholder Representative may resign at any time. In the event that the Securityholder Representative becomes unable to perform its responsibilities hereunder or resigns from such position, the Participating Securityholders who hold at least a majority-in-interest of the Allocable Share at such time shall be authorized to and shall select another representative to fill such vacancy and such substituted representative shall be deemed to be the Securityholder Representative for all purposes of this Agreement and the documents delivered pursuant hereto.

(c) By their adoption of this Agreement and acceptance of consideration under this Agreement, the Participating Securityholders shall be deemed to have agreed that:

(i) the Securityholder Representative shall be appointed and constitute the true and lawful attorney-in-fact of each Participating Securityholder with full power in his, her or its name and on his, her or its behalf to (A) act according to the terms of this Agreement, (B) execute, deliver, acknowledge, certify and file on behalf of the Participating Securityholders any and all documents that the Securityholder Representative may, in its sole discretion, determine to be necessary, desirable or appropriate, (C) give and receive notices and other communications relating to this Agreement and the transactions contemplated hereby on behalf of the Participating Securityholders, (D) interpret the terms and provisions of this Agreement and any documents to be executed and delivered by Merger Partner or the Participating Securityholders in connection herewith, (E) amend, modify or supplement this Agreement or any of the instruments to be delivered to Public Company pursuant to this Agreement, (F) give or agree to, on behalf of all or any of the Participating Securityholders, any and all consents or modifications deemed by the Securityholder Representative, in its sole and absolute discretion, to be necessary or appropriate under this Agreement and the execution or delivery of any documents that may be necessary or appropriate in connection therewith, (G) take or refrain from taking any actions (whether by negotiation, settlement, litigation or otherwise) on behalf of the Participating Securityholders to resolve or settle all matters and disputes arising out of or related to this Agreement and the transactions contemplated hereby, including any matters contemplated by Article X and allocating any Losses related to Consideration Matters or Fraud to the Participating Securityholder(s) responsible for such Losses, and (H) in general, do all things and perform all acts deemed advisable in connection with this Agreement;

(ii) Public Company and its Affiliates shall be entitled to rely conclusively on the instructions, interpretations and decisions given or made by the Securityholder Representative as to any of the matters in this Agreement, and no party shall have any cause of action against Public Company or any of its Affiliates for any action taken by Public Company in reliance upon any such instructions or decisions;

(iii) all actions, decisions and instructions of the Securityholder Representative under this Agreement shall be conclusive and binding upon each of the Participating Securityholders and such Participating Securityholder's successors as if expressly confirmed and ratified in writing by such Participating Securityholder, and all defenses which may be available to any Participating Securityholder to contest, negate or disaffirm the action of the Securityholder Representative taken in good faith under this Agreement are waived; and

(iv) the provisions of this Section 11.17, including the powers, immunities and rights to indemnification granted to the Securityholder Representative hereunder: (A) are independent and severable, are irrevocable and coupled with an interest and shall be binding on any successor to any Participating Securityholder, and shall survive the death, incompetence, bankruptcy, merger, change of control or liquidation of any Participating Securityholder, and (B) shall survive the delivery of an assignment by any Participating Securityholder of the whole or any fraction of his, her or its interest in any amounts payable hereunder.

(d) Neither the Securityholder Representative nor its members, managers, directors, officers, contractors, agents and employees (collectively, the "Securityholder Representative Group"), shall be liable to any Participating Securityholder for any action or failure to act in connection with the acceptance or administration of the Securityholder Representative's responsibilities hereunder, unless and only to the extent such action or failure to act constitutes fraud, bad faith, gross negligence or willful misconduct on the part of the Securityholder Representative as determined in a final and non-appealable judgment of a court of competent jurisdiction. The Securityholder Representative may seek the advice of legal counsel in the event of any dispute or question as to the construction of any of the provisions of this Agreement or its duties or rights hereunder, and it shall incur no liability in its capacity as the Securityholder Representative to any Participating Securityholder and shall be fully protected with respect to any action taken, omitted or suffered by it in good faith in accordance with the advice of such counsel. The Securityholder Representative shall not by reason of this Agreement have a fiduciary relationship in respect of any Participating Securityholder. The Participating Securityholders shall indemnify, defend and hold harmless the Securityholder Representative Group from and against any and all losses, liabilities, fees, costs, expenses (including fees, disbursements and costs of counsel and other skilled professionals), judgments, fines, and amounts paid in settlement incurred without bad faith, gross negligence, or willful misconduct on the part of the Securityholder Representative and arising out of or in connection with the acceptance or administration of its duties hereunder. The Participating Securityholders acknowledge that the Securityholder Representative shall not be required to expend or risk its own funds or otherwise incur any financial Liability in the exercise or performance of any of its powers, rights, duties or privileges or pursuant to this Agreement or the transactions contemplated hereby and the Participating Securityholders shall be held severally liable for expenses incurred by the Securityholder Representative as a result of the performance of its responsibilities hereunder. The immunities and rights to indemnification shall survive the resignation or removal of the Securityholder Representative and the Closing and/or any termination of this Agreement.

(e) The Securityholder Representative is hereby authorized to establish an account for the purposes of holding the Reserve Amount (the "Reserve Account") and the Securityholder Representative shall use the Reserve Amount in its sole discretion to pay any fees, costs, expenses or other obligations incurred by the Securityholder Representative acting in its capacity as such. Following the termination of all duties of the Securityholder Representative, the Securityholder Representative shall transfer any remaining funds held in the Reserve Account to Public Company.

11.18 Certain Defined Terms. For purposes of this Agreement:

(a) "Acquisition Inquiry" means, with respect to Merger Partner or Public Company, as applicable, an inquiry, indication of interest or request for information (other than an inquiry, indication of interest or request for information made or submitted by Merger Partner, on the one hand, or Public Company, on the other hand, to the other party) that would reasonably be expected to lead to an Acquisition Proposal, other than, as applicable, with respect to the Concurrent Financing or the Bridge Financing.

(b) "Acquisition Proposal" means, with respect to Public Company or Merger Partner, (i) any inquiry, proposal or offer for a merger, consolidation, dissolution, sale of substantial assets, recapitalization, share exchange, tender offer or other business combination involving such party and its Subsidiaries (other than mergers, consolidations, recapitalizations, share exchanges or other business combinations involving solely such party and/or one or more Subsidiaries of such party), (ii) any proposal for the issuance by such party of 15% or more of its equity securities or (iii) any proposal or offer to acquire in any manner, directly or indirectly, 15% or more of the equity securities or consolidated total assets of such party and its Subsidiaries, in each case other than the transactions contemplated by this Agreement; *provided*, *however*, that no inquiry, proposal, or offer received pursuant to the terms of the Concurrent Financing or the Bridge Financing shall be an Acquisition Proposal.

(c) "Action" means any suit, litigation, arbitration, claim, cross-claim, counterclaim, complaint, charge, demand, mediation, audit, hearing, investigation, action, or proceeding, in each case, whether legal, administrative or arbitral.

(d) "A.G.P. Warrants" means the warrants to purchase up to 5,500 shares of Public Company Common Stock, issued by Public Company to A.G.P./Alliance Global Partners pursuant to that certain underwriting agreement, dated February 15, 2024, as amended by that certain Letter Agreement, dated February 16, 2024.

(e) "Allocable Share" means, for each share of Merger Partner Capital Stock, the number of shares of Public Company Common Stock issuable or to be released from escrow or amount payable for such share as determined in accordance with the terms of the certificate of incorporation of Merger Partner for a Deemed Liquidation Event (as defined in the certificate of incorporation of Merger Partner). Without limiting the generality of the foregoing, following the Closing at such time as any Contingent Shares, Escrow Shares, Milestone Payments or PRV Interest are to be issued, released or paid to the Participating Securityholders, the Allocable Share for each share of Merger Partner Capital Stock shall be determined, taking into consideration on a cumulative basis the combined amount of the applicable Contingent Shares or Escrow Shares then to be issued or released or the Milestone Payment or PRV Interest then to be paid, and all shares of Public Company Common Stock, Milestone Payments or PRV Interest previously issued, released or paid in accordance with this Agreement. The term "Allocable Share" when used in reference to the Allocable Share of any Participating Securityholder shall mean the aggregate Allocable Share of all equity interests of Merger Partner held by such Participating Securityholder as to which such Participating Securityholder has received shares of Public Company Common Stock or any portion of Milestone Payments or PRV Interest in accordance with Section 2.1. All references in this definition to the certificate of incorporation of Merger Partner refer to Merger Partner's certificate of incorporation in effect as of immediately prior to the Initial Effective Time.

(f) "Biologics License Application" means an application submitted to the FDA seeking approval of a biologic pursuant to 21 U.S.C. § 262 and 21 C.F.R. Part 601.

(g) "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banking institutions in New York, New York are required or permitted by Law to be closed or other day on which the Delaware Secretary of State is closed.

(h) "Change of Control" means any of the following, in each case whether effected in a single transaction or a series of related transactions: (a) any merger, consolidation, share exchange, recapitalization, or reorganization involving Public Company in which the holders of voting securities of Public Company (or any entity of which Public Company is a direct or indirect wholly owned Subsidiary) immediately prior to such transaction cease to hold, immediately following such transaction, more than fifty percent (50%) of the voting power of the surviving or resulting entity (or its direct or indirect parent entity); (b) any Person or group (as defined under Section 13(d) of the Exchange Act) acquires beneficial ownership (as defined under Rule 13d-3 thereunder) of more than fifty percent (50%) of the then-outstanding voting securities of Public Company; (c) any Disposition of all or substantially all of the consolidated assets of Public Company to any third party not affiliated with Public Company; or (d) any Disposition by Public Company or any of its Subsidiaries of all or substantially all of the Product Rights to any third party not affiliated with Public Company, including by way of an exclusive license (whether or not title thereto is retained); *provided* that neither the Mergers nor any other transaction expressly contemplated by this Agreement shall constitute a "Change of Control".

(i) "Clinical Milestone" means the Topline Analysis following Completion of the Phase 3 Trial showing (a) a statistically significant difference in favor of D-Fi on the Primary Endpoint; (b) D-Fi demonstrating either at least 60% Complete Wound Closure as of the Primary Endpoint Measurement Time(s) or at least a 39% treatment difference between the treated and control wounds as of the Primary Endpoint Measurement Time(s); and (c) that D-Fi achieved a safety and tolerability profile that is no worse than the previous D-Fi clinical studies or had no material negative safety observations that call into question the approvability of the D-Fi program.

(j) "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(k) "COC Acquiror" means, with respect to any Change of Control, the Person (including, if applicable, the surviving or resulting entity in a merger, consolidation, or reorganization, or the beneficial owner in an open-market acquisition of voting securities) that, immediately following the consummation of such Change of Control, (a) controls Public Company or the Surviving Company, as applicable, or (b) directly or indirectly acquires all or substantially all of the consolidated assets of Public Company.

(l) "Code" means the Internal Revenue Code of 1986, as amended.

(m) "Commercially Reasonable Efforts" means with respect to the efforts to be expended, or considerations to be undertaken, by Public Company and the Surviving Company with respect to the matters set forth in Section 9.5(a), reasonable, good faith efforts to accomplish such objective, activity or decision as Public Company would use to accomplish a similar objective, undertake a similar activity or make a similar decision under similar circumstances in the ordinary course of its business, it being understood and agreed that with respect to the research, study, development, formulation, processing, engineering, manufacture, testing, seeking and obtaining Regulatory Approval, or commercialization, of the Covered Product, on a country-by-country basis, Public Company and the Surviving Company may take into account the following factors, in each case based on conditions then prevailing: (a) issues of efficacy, safety, and expected and actual approved labeling, (b) the expected and actual competitiveness of alternative products sold by third parties in the marketplace, (c) the expected and actual product profile of the Covered Product, (d) the expected and actual patent and other proprietary position of the Covered Product, (e) the likelihood of Regulatory Approval and/or pricing approval or pricing restrictions of the Covered Product, given the regulatory structure involved, including regulatory or data exclusivity, and (f) the expected and actual probability of the return on investment in the Covered Product.

(n) "Company Products" means the products and services currently being, or contemplated to be, sold or distributed by Merger Partner or the Merger Partner Subsidiary.

(o) "Complete Wound Closure" means complete (100%) wound closure defined as skin re-epithelialization without drainage.

(p) "Completion" means completion of the last patient last visit to enable analysis of the Primary Endpoint of the Phase 3 Trial in accordance with the prespecified protocol and statistical analysis plan.

(q) "Contingent Expenses" means any amount required to be paid after Closing to any agent, broker, investment banker, financial advisor or other firm or Person who is or shall be entitled, as a result of any action, agreement or commitment of Merger Partner, to any broker's, finder's, financial advisor's or other similar fee or commission in connection with obtaining FDA Approval or achieving any Milestone.

(r) "Contingent Shares" means:

(i) prior to the consummation of any Change of Control following the Closing, a number of shares of Public Company Common Stock equal to the product of (A) (x) Five Million Eight Hundred Thousand (5,800,000) shares of Public Company Common Stock minus (y) a number of shares of Public Company Common Stock equal to the quotient of (I) the amount of Contingent Expenses, divided by (II) the Public Company Post-Closing Price, multiplied by (B) the excess (if any) of (x) one minus (y) the product of (I) the total number of complete calendar quarters elapsed after March 31, 2031 and on or before the Approval Date and (II) 0.05 (such product, as adjusted pursuant to Section 9.2(e), the "Base Contingent Share Number"); and

(ii) upon and following any Change of Control (each, a "COC Event"), in lieu of the shares of Public Company Common Stock otherwise issuable pursuant to clause (i) of this definition, consideration of the same type and in the same amount per share as the consideration paid to holders of Public Company Common Stock in such COC Event (the "Contingent Consideration Equivalent"), applied to the Base Contingent Share Number as adjusted through the date of such COC Event pursuant to Section 11.8, and adjusted thereafter to reflect any further reorganization, recapitalization, or similar transaction affecting such consideration so as to preserve the economic benefit intended to be delivered to the Participating Securityholders;

it being the intent of the parties that "Contingent Shares" shall at all times represent the consideration that holders of the Base Contingent Share Number of Public Company Common Stock would be entitled to receive in any COC Event, whether in the form of cash, securities, property, or any combination thereof, and that such obligations shall survive and bind each COC Acquiror and its successors regardless of the number of Changes of Control that may occur.

(s) "Contract" means, with respect to any Person, any written, oral or other agreement, contract, subcontract, lease (whether for real or personal property), mortgage, understanding, arrangement, instrument, note, option, warranty, license, sublicense, covenant not to sue, insurance policy, benefit plan or commitment or undertaking of any nature to which such Person is a party or by which such Person or any of its assets are bound under applicable Law.

(t) "Covered Product" means any product or therapy, including any investigational product or therapy, that constitutes, incorporates, comprises or contains either (a) D-Fi and/or (b) any related, improved, successor, replacement, derivative and/or variation of D-Fi, in each case for use in the Territory in all forms, presentations, formulations, which, for the avoidance of doubt, includes any topical formulation, and dosage forms, irrespective of whether such products or therapies are authorized for marketing in the Territory under a single Regulatory Approval or multiple Regulatory Approvals or whether such products or therapies are formulated as of the date hereof.

(u) "D-Fi" means Merger Partner's autologous human fibroblast cell-based gene therapy genetically modified to express COL7 for the prevention and treatment of epidermolysis bullosa and/or dystrophic epidermolysis bullosa, also known as FCX-007 (dabocemagene autoficel).

(v) "D-Fi Net Sales" means with respect to the Covered Product for any Reporting Period or TTM Period, as applicable, the gross amount invoiced, billed or otherwise recorded for sales of the Covered Product anywhere in the Territory during such period by or on behalf of Public Company, its Affiliates, any Distributor, or any Licensee of Public Company or any of its Affiliates (each of the foregoing Persons, for purposes of this definition, shall be considered a "Related Party") to a third party in an arms-length transaction less the following amounts, accrued in accordance with GAAP (applied consistently with the policies, conventions, methodologies and procedures used by Public Company to prepare its financial statements for purposes of its public reporting obligations under the Exchange Act); provided that any given amount may be taken as a permitted deduction only once:

(i) reasonable and customary rebates, chargebacks, quantity, trade and similar discounts, credits and allowances and other price reductions reasonably granted, allowed, incurred or paid in so far as they are applied to sales of the Covered Product;

(ii) discounts (including cash, quantity, trade, governmental, and similar discounts), coupons, retroactive price reductions, charge back payments and rebates granted to managed care organizations or to federal, state and local governments, or to their agencies (including payments made under the new "Medicare Part D Coverage Gap Discount Program" specific to the Covered Product), in each case, as applied to sales of the Covered Product and actually given to customers;

(iii) reasonable and customary credits, adjustments, and allowances, including those granted on account of price adjustments, billing errors, and damage, Covered Product otherwise not in saleable condition, and rejection, return or recall of a Covered Product;

(iv) reasonable and customary freight and insurance costs incurred with respect to the shipment of a Covered Product to customers, in each case if charged separately and invoiced to the customer;

(v) sales, use, value added and excise taxes, customs duties, surcharges and other similar governmental charges incurred in connection with the exportation or importation of a Covered Product, in each case if charged separately and invoiced to the customer; and

(vi) co-pay assistance or other financial support provided to patients, including discounts, reimbursements, or subsidies directly applied to offset the patient's out-of-pocket costs, but excluding the fees paid to administer such programs.

For clarity, "D-Fi Net Sales" shall include (i) sales or dispositions for charitable, promotional, pre-clinical, clinical, regulatory, compassionate use, named patient use or indigent or other similar programs for which Public Company or its successors or assignees receives payment or books an accounts receivable charge, (ii) any amounts or other consideration including milestone payments, upfront payments, or payments in kind received from a Related Party, Licensee, Distributor, or non-Related Party in consideration of the grant of a (sub)license or co-promotion or distribution right to such Related Party, Licensee, Distributor or non-Related Party and (iii) any compensation, milestone, up front payment, payment in kind, or revenue interest for sales, marketing, co-promotion or promotion rights worldwide or pursuant to an Out-License.

"D-Fi Net Sales" shall not include (i) reasonable quantities of Covered Product used as samples, and Covered Product used in the development of Covered Product, or (ii) sales or dispositions between any of the Related Parties (unless a Related Party is the final end-user of such Covered Product), but will include subsequent sales or dispositions of Covered Product to a non-Related Party.

With respect to sales of a Covered Product invoiced in U.S. dollars, D-Fi Net Sales shall be determined in U.S. dollars. With respect to sales of a Covered Product invoiced in a currency other than U.S. dollars, D-Fi Net Sales shall be determined by converting the currencies at which the sales are made into U.S. dollars, at rates of exchange determined in a manner consistent with Public Company's or a Licensee's, as applicable, method for calculating rates of exchange in the preparation of Public Company's or such Licensee's annual financial statements in accordance with GAAP (applied consistently with the policies, conventions, methodologies and procedures used by Public Company to prepare its financial statements for purposes of its public reporting obligations under the Exchange Act).

(w) "Disposition" means, with respect to any Person, directly or indirectly, the sale, assignment, conveyance, transfer, license, sublicense or other disposition (whether in a single transaction or a series of related transactions) (including by way of a sale and leaseback transaction) of property or assets by such Person.

(x) "Distributor" means a third party that (a) purchases or has the option to purchase the Covered Product in finished form from or at the direction of Public Company or any of its Affiliates, (b) has the right, option or obligation to distribute, market and sell such Covered Product (with or without packaging rights) in one or more jurisdictions in the Territory, and (c) does not otherwise make any royalty, milestone, profit share or other similar payment to Public Company or its Affiliate based on such third party's sale of the Covered Product. The term "packaging rights" in this definition means the right for the Distributor to package or have packaged Covered Product supplied in unpackaged bulk form into individual ready-for-sale packs.

(y) "Employee Benefit Plan" means any "employee pension benefit plan" (as defined in Section 3(2) of ERISA), any "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), any "employee benefit plan" (as defined in Section 3(3) of ERISA), and any other written or oral plan, agreement, program, policy, practice or arrangement providing direct or indirect compensation or benefits to or for the benefit of any current or former employee, director or other individual service provider, including insurance coverage (including any health, dental, vision and cafeteria plan benefits), employment agreements, severance benefits, disability benefits, fringe benefits, perquisites, change in control benefits, retention benefits, paid time off benefits, nonqualified deferred compensation, bonuses, stock options, stock purchase, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement compensation and all unexpired severance agreements.

(z) "Environmental Law" means any Law, regulation, order, decree, permit, authorization, common law or agency requirement of any jurisdiction relating to: (i) the protection, investigation or restoration of the environment, human health and safety (as it relates to exposure to Hazardous Substances) or natural resources; (ii) the handling, use, storage, treatment, presence, disposal, release or threatened release of any Hazardous Substance; or (iii) wetlands, pollution, contamination or any injury or threat of injury to Persons or property.

(aa) "Equity Interests" means, with respect to any Person, all of the (i) shares of capital stock of (or other ownership or profit interests in) such Person, (ii) warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, (iii) securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and (iv) other ownership or profit interests in such Person (including partnership, member, membership or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

(bb) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(cc) "ERISA Affiliate" means any Person, entity (whether or not incorporated) or trade or business that is, or at any applicable time was, treated as a "single employer" or under common control with Public Company or Merger Partner, as applicable, or any Subsidiary or Affiliate of Public Company or Merger Partner, as applicable, within the meaning of Section 414 of the Code or Section 4001 of ERISA.

(dd) "Escrow Account" means the account with the Escrow Agent into which the Escrow Shares are deposited.

(ee) "Escrow Agreement" means an Escrow Agreement between Public Company, the Securityholder Representative and the Escrow Agent, in a form reasonably satisfactory to Public Company and the Securityholder Representative.

(ff) "Escrow Shares" means Five Hundred Twenty Thousand (520,000) shares of Public Company Common Stock, representing 10% of the Merger Partner Merger Shares.

(gg) "Excluded Alternative Payee" means, with respect to any designation of a Permitted Alternative Payee and determined as of the date of such designation, (a) any Person (i) named as a "Specially Designated National and Blocked Person" ("SDN") on the most current list ("SDN List") published by the Office of Foreign Assets Control of the U.S. Department of the Treasury at its official website or any replacement website or other replacement official publication of such list, or that is otherwise the subject of any economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by any Governmental Entity having jurisdiction over Public Company or any of its Subsidiaries, or (ii) in which any Person on the SDN List has a fifty percent (50%) or greater ownership interest or that is otherwise controlled by an SDN, in each case directly or indirectly, or (b) any Person who is (or whose Affiliate is) adverse to Public Company or any of its Subsidiaries in any pending or, to the knowledge of the Participating Securityholder designating such Person as a Permitted Alternative Payee, threatened Action.

(hh) "Excluded Contracts" means (i) Contracts solely concerning non-exclusive rights granted to Merger Partner or Public Company (as applicable) that are not material to the business of such Person, including any Contract (x) solely for the internal use of "off-the-shelf" software licensed pursuant to "shrink wrap" licenses, and (y) with total annual fees which are less than $150,000, (ii) Contracts the terms of which are solely focused on obligations relating to non-disclosure or confidentiality or assignments of Intellectual Property (to the extent in customary form and copies of which forms have been made available to Public Company or Merger Partner, as applicable), in each case entered into in the Ordinary Course of Business, (iii) statements of work, works orders, project annexes, purchase orders and associated terms and conditions to the extent the Contract accompanying such statements of work, works orders, project annexes, purchase orders, and associated terms and conditions has been made available to Public Company or Merger Partner, as applicable, (iv) agreements with clinical trial sites, and (v) solely with respect to Public Company, Contracts related to Intellectual Property that have been abandoned as of the date hereof, including those identified on Section 11.18(hh) of the Public Company Disclosure Schedule.

(ii) "Exploit", "Exploiting" and "Exploitation" shall mean, with respect to the Covered Product, the research, study, development, formulation, processing, engineering, manufacture, testing, use, sale, offer for sale (including marketing and promotion), distribution (including importing, exporting, transporting, customs clearance, warehousing, invoicing, handling and delivering) or other commercialization of such product.

(jj) "FDA Approval" means the FDA's granting of approval and issuance of a biologics license with respect to a Biologics License Application for D-Fi for the treatment of wounds in adult and pediatric patients (from birth) with dystrophic epidermolysis bullosa with mutations in the collagen type VII alpha 1 chain (COL7A1) gene.

(kk) "Federal Rate" means, with respect to any payment to be made pursuant to this Agreement, the long-term applicable federal rate for purposes of Code Section 1274(d) in effect for the month in which such payment is due and payable.

(ll) "FFDCA" means the United States Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., as amended from time to time, together with any rules, regulations and requirements promulgated thereunder (including all additions, supplements, extensions, and modifications thereto).

(mm) "Floor Price" means the product of (i) the Public Company Closing Price, multiplied by (ii) 0.7.

(nn) "Fraud" means an actual common law fraud under the laws of the State of Delaware by a party hereto in the making of the representations and warranties by such party as set forth in Article III or Article IV, as applicable, and not with respect to any other matters. Notwithstanding anything to the contrary herein, "Fraud" shall not include any claim for constructive fraud, equitable fraud, promissory fraud, unfair dealings fraud, or any tort based on negligence or recklessness (including negligent misrepresentation).

(oo) "Hazardous Substance" means any substance that is: (i) listed, classified, regulated or which falls within the definition of a "hazardous substance," "hazardous waste" or "hazardous material" pursuant to any Environmental Law; (ii) any petroleum product or by-product, asbestos-containing material, lead-containing paint or plumbing, polychlorinated biphenyls, radioactive materials or radon; or (iii) any other substance that is the subject of regulatory action by any Governmental Entity pursuant to any Environmental Law.

(pp) "Horizon Warrants" means the warrants to purchase up to 65,488 shares of Public Company Common Stock, issued by Public Company to Horizon Technology Finance Corporation pursuant to that certain Venture Loan and Security Agreement, dated January 12, 2026.

(qq) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(rr) "In-License" means each license, settlement agreement or other agreement or arrangement between the Surviving Company or any of its Affiliates and any third party pursuant to which the Surviving Company or any of its Affiliates obtains a license or sublicense or a covenant not to sue or similar grant of rights to any patents or other intellectual property rights of such third party that is necessary for the Exploitation of a Covered Product.

(ss) "Indebtedness" means, with respect to any Person and as of any time of determination (and without duplication), all obligations or liabilities (including, as applicable, the principal and accrued and unpaid interest thereon, any prepayment, redemption fees, premiums, penalties and any other amounts payable that would arise at the Closing as a result of the discharge of the obligations, including, in each case, any such amounts set forth in the applicable payoff letter) of such Person (but specifically excluding trade payables, accrued expenses and accruals incurred in the ordinary course of business): (i) for borrowed money, (ii) evidenced by debt securities, bonds, debentures, notes or similar instruments, (iii) upon which interest charges are customarily paid (other than obligations accepted in connection with the purchase of products or services in the Ordinary Course of Business), (iv) in respect of liabilities of others that are secured by (or which the holder of such liabilities has an existing right, contingent or otherwise, to be secured by) any Lien or security interest on property owned or acquired by the Person in question whether or not the obligations secured thereby have been assumed, (v) under leases required to be accounted for as finance leases under GAAP (and not operating leases), (vi) with respect to earn-outs, purchase price holdbacks or similar obligations or the deferred purchase price of property, goods or services, (vii) relating to all reimbursement obligations with respect to letters of credit, bankers' acceptances, performance bonds, surety bonds or similar obligations, in each case solely to the extent drawn, (viii) relating to commitments to repurchase equity securities of such Person, (ix) in respect of currency or interest rate swaps, collars, caps, hedges, or similar arrangements, or (x) under any guarantee of any such indebtedness described in the foregoing clauses (i) through (ix) (other than, in each case, any such obligations or liabilities between or among such Person and its Subsidiaries).

(tt) "Information Statement" means a definitive information statement, including the related preliminary information statement, and any amendment or supplement thereto, in each case prepared in accordance with Section 14(c) and Schedule 14C of the Exchange Act and relating to the Mergers and this Agreement to be mailed to the stockholders of Public Company following the receipt of the Public Company Written Consent.

(uu) "Intellectual Property" means the following subsisting throughout the world: (i) Patent Rights; (ii) Trademarks and all goodwill in the Trademarks; (iii) copyrights, designs, data and database rights and registrations and applications for registration thereof, including moral rights of authors; (iv) mask works and registrations and applications for registration thereof and any other rights under the Laws of any jurisdiction; (v) inventions, invention disclosures, statutory invention registrations, trade secrets and rights in confidential business information, know-how, scientific and technical information, data and technology, including rights in medical, clinical, toxicological and other scientific data, manufacturing and product processes, algorithms, techniques and analytical methodology, research and development information, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, whether patentable or nonpatentable, whether copyrightable or noncopyrightable and whether or not reduced to practice; and (vi) other proprietary rights relating to any of the foregoing (including remedies against infringement thereof and rights of protection of interest therein under the Laws of all jurisdictions).

(vv) "Intellectual Property Registrations" means Patent Rights, applications and registrations for Trademarks, applications and registrations for copyrights and designs, mask work registrations and applications for each of the foregoing, which are issued by, filed with, or recorded by any state, government or other public legal authority at any time in any jurisdictions, or, in the case of Internet domain names and social media accounts and identifiers, which are issued by, filed with, or recorded by any third party.

(ww) "Intellectual Property Rights" means any and all of the following: (a) Patent Rights, (b) all know-how and (c) all registered and unregistered trademarks, trademark applications, service marks, trade names, logos, packaging design, slogans and internet domain names, in each case, used in, relating to or necessary for the Exploitation of the Covered Product that is owned, controlled or licensed by the Surviving Company or any of its Subsidiaries.

(xx) "knowledge of Merger Partner" and similar expressions mean the actual knowledge of the individuals identified on Schedule K of the Merger Partner Disclosure Schedule for this purpose.

(yy) "knowledge of Public Company" and similar expressions mean the actual knowledge of the individuals identified on Schedule K of the Public Company Disclosure Schedule for this purpose.

(zz) "Law" means each applicable transnational, domestic or foreign federal, state or local law (statutory, common or otherwise), order, judgment, rule, code, edict, statute, regulation, requirement, variance, decree, writ, injunction, award, ruling, Permit or ordinance issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity, including any applicable stock exchange rule or requirement.

(aaa) "Liability" means, with respect to any Person, any and all liabilities, obligations, claims, and deficiencies of any kind (whether known or unknown, contingent, accrued, due or to become due, secured or unsecured, matured or otherwise), including accounts payable, all liabilities, obligations, claims, and deficiencies related to Indebtedness or guarantees, costs, expenses, royalties payable, and other reserves, termination payment obligations, and all other liabilities, obligations, claims, and deficiencies of such Person or any of its Subsidiaries or Affiliates, in each case, regardless of whether or not such liabilities, obligations, claims, and deficiencies are required to be reflected on a balance sheet in accordance with GAAP.

(bbb) "Licensee" means the counter-party under any Out-License. For clarity, a Distributor shall not be deemed to be a "Licensee."

(ccc) "Loss" means any damages, losses, Liabilities, obligations, claims of any kind, Taxes, interest, fines, penalties, awards, payments, costs, charges, sanctions, settlements, or expenses (including reasonable attorneys' fees and expenses); *provided*, that in no event shall Loss include any amounts in respect of punitive or exemplary Losses unless actually paid to a third party.

(ddd) "Major Markets" means, collectively, the United States, France, Spain, Germany, Italy and the United Kingdom, and "Major Market" means any of the foregoing, individually.

(eee) "Merger Partner Capital Stock" means, collectively, the Merger Partner Common Stock and the Merger Partner Preferred Stock.

(fff) "Merger Partner Common Stock" means the common stock of Merger Partner, par value $0.00001 per share.

(ggg) "Merger Partner Employee Plans" means all Employee Benefit Plans sponsored, maintained, or contributed to (or required to be contributed to), by Merger Partner or any of its Subsidiaries or with respect to which Merger Partner or any of its Subsidiaries have any Liability.

(hhh) "Merger Partner Equity Plan" means the Merger Partner Amended and Restated Management Incentive Plan, effective October 9, 2018.

(iii) "Merger Partner Intellectual Property" means the Merger Partner Owned Intellectual Property and the Merger Partner Licensed Intellectual Property.

(jjj) "Merger Partner Key Employee" means a current employee of Merger Partner or the Merger Partner Subsidiary who is an executive officer of Merger Partner or the Merger Partner Subsidiary or who otherwise has material access to confidential or proprietary information of Merger Partner or the Merger Partner Subsidiary. As of the date hereof, the Merger Partner Key Employees are (i) Matthew Gantz (Chief Executive Officer), (ii) Dr. David Chu (Chief Medical Officer), (iii) Laura Martin (Associate Director Program Management), and (iv) Matthew Crabtree (Vice President, Finance).

(kkk) "Merger Partner Licensed Intellectual Property" means all Intellectual Property that is licensed to Merger Partner or the Merger Partner Subsidiary by any individual or entity, excluding any Intellectual Property that is licensed to Merger Partner or the Merger Partner Subsidiary under Excluded Contracts.

(lll) "Merger Partner Material Adverse Effect" means any change, effect, event, circumstance or development (an "Effect") that, individually or in the aggregate with all other Effects that have occurred through the date of determination of the occurrence of a Merger Partner Material Adverse Effect, has had, or is reasonably likely to have, a material adverse effect on the business, assets and liabilities, financial condition or results of operations of Merger Partner and the Merger Partner Subsidiary, taken as a whole; *provided*, *however*, that no Effect, to the extent resulting from or arising out of any of the following, alone or in combination, shall be deemed to be a Merger Partner Material Adverse Effect or be taken into account for purposes of determining whether a Merger Partner Material Adverse Effect has occurred or is reasonably likely to occur: (i) changes after the date of this Agreement in prevailing economic or market conditions in the United States or any other jurisdiction (except to the extent those changes have a disproportionate effect on Merger Partner relative to the other participants in the industry or industries in which Merger Partner operates), (ii) changes or events after the date of this Agreement affecting the industry or industries in which Merger Partner operates generally (except to the extent those changes or events have a disproportionate effect on Merger Partner relative to the other participants in the industry or industries in which Merger Partner operates), (iii) changes after the date of this Agreement in generally accepted accounting principles or requirements or the interpretation thereof (except to the extent those changes have a disproportionate effect on Merger Partner relative to the other participants in the industry or industries in which Merger Partner operates), (iv) changes after the date of this Agreement in Laws, rules or regulations of general applicability or interpretations thereof by any Governmental Entity (except to the extent those changes have a disproportionate effect on Merger Partner relative to the other participants in the industry or industries in which Merger Partner operates), (v) any natural disaster, epidemic, pandemic or other disease outbreak or any outbreak of major hostilities or any act of terrorism (except to the extent those changes or events have a disproportionate effect on Merger Partner relative to the other participants in the industry or industries in which Merger Partner operates), (vi) the execution, delivery, announcement or performance of the obligations under this Agreement or the announcement, pendency or anticipated consummation of the transactions contemplated by this Agreement, (vii) any failure by Merger Partner to meet any internal guidance, budgets, plans or forecasts of its revenues, earnings or other financial performance or results of operations (but not, in the case of this clause (vii), the underlying cause of such changes or failures, unless such changes or failures would otherwise be excepted from this definition), (viii) the taking of any action, or the failure to take any action, by Merger Partner that is expressly required under the terms of this Agreement, or (ix) any equityholder or derivative litigation arising from or relating to this Agreement or the transactions contemplated by this Agreement.

(mmm) "Merger Partner Merger Shares" means Five Million Two Hundred Thousand (5,200,000) shares of Public Company Common Stock.

(nnn) "Merger Partner Options" means options to purchase shares of Merger Partner Common Stock granted by Merger Partner under the Merger Partner Equity Plan.

(ooo) "Merger Partner Owned Intellectual Property" means all Intellectual Property owned or purported to be owned by Merger Partner or the Merger Partner Subsidiary, in whole or in part.

(ppp) "Merger Partner Preferred Stock" means the Merger Partner Series A-1 Preferred Stock, the Merger Partner Series A-2 Preferred Stock, the Merger Partner Series A-3 Preferred Stock, the Merger Partner Series A-4 Preferred Stock, the Merger Partner Series A-5 Preferred Stock, the Merger Partner Series A-6 Preferred Stock, the Merger Partner Series B Preferred Stock, the Merger Partner Series C Preferred Stock, the Merger Partner Series C-1 Preferred Stock, the Merger Partner Series D-1 Preferred Stock and the Merger Partner Series D-2 Preferred Stock.

(qqq) "Merger Partner Registrations" means Intellectual Property Registrations that are registered or filed in the name of Merger Partner or the Merger Partner Subsidiary or where Merger Partner or the Merger Partner Subsidiary is the assignee thereof, in each case, alone or jointly with others.

(rrr) "Merger Partner Series A-1 Preferred Stock" means the preferred stock of Merger Partner designated as Series A-1 Preferred Stock, par value $0.00001 per share.

(sss) "Merger Partner Series A-2 Preferred Stock" means the preferred stock of Merger Partner designated as Series A-2 Preferred Stock, par value $0.00001 per share.

(ttt) "Merger Partner Series A-3 Preferred Stock" means the preferred stock of Merger Partner designated as Series A-3 Preferred Stock, par value $0.00001 per share.

(uuu) "Merger Partner Series A-4 Preferred Stock" means the preferred stock of Merger Partner designated as Series A-4 Preferred Stock, par value $0.00001 per share.

(vvv) "Merger Partner Series A-5 Preferred Stock" means the preferred stock of Merger Partner designated as Series A-5 Preferred Stock, par value $0.00001 per share.

(www) "Merger Partner Series A-6 Preferred Stock" means the preferred stock of Merger Partner designated as Series A-6 Preferred Stock, par value $0.00001 per share.

(xxx) "Merger Partner Series B Preferred Stock" means the preferred stock of Merger Partner designated as Series B Preferred Stock, par value $0.00001 per share.

(yyy) "Merger Partner Series C Preferred Stock" means the preferred stock of Merger Partner designated as Series C Preferred Stock, par value $0.00001 per share.

(zzz) "Merger Partner Series C-1 Preferred Stock" means the preferred stock of Merger Partner designated as Series C-1 Preferred Stock, par value $0.00001 per share.

(aaaa) "Merger Partner Series D-1 Preferred Stock" means the preferred stock of Merger Partner designated as Series D-1 Preferred Stock, par value $0.00001 per share.

(bbbb) "Merger Partner Series D-2 Preferred Stock" means the preferred stock of Merger Partner designated as Series D-2 Preferred Stock, par value $0.00001 per share.

(cccc) "Merger Partner Transaction Expenses" means all Transaction Expenses incurred by Merger Partner at or prior to the Initial Effective Time in compliance with Section 5.1(k).

(dddd) "Merger Partner Warrant Agreements" means the warrant agreements set forth in Section 3.2(c) of the Merger Partner Disclosure Schedule.

(eeee) "Merger Partner Warrants" means outstanding warrants to purchase shares of Merger Partner Capital Stock issued pursuant to the Merger Partner Warrant Agreements.

(ffff) "Milestone Payments" means, collectively, the Clinical Milestone Payment, Commercial Sale Milestone Payment, First Revenue Milestone Payment, Second Revenue Milestone Payment and Third Revenue Milestone Payment, and "Milestone Payment" means any of the foregoing individually.

(gggg) "Milestones" means, collectively, the Clinical Milestone, Commercial Sale Milestone and any Revenue Milestone, and "Milestone" means any of the foregoing individually.

(hhhh) "NRS" means the Nevada Revised Statutes.

(iiii) "Ordinary Course of Business" means, with respect to a Person, in the ordinary course of business consistent in all material respects with past practice of such Person.

(jjjj) "Organizational Documents" means, with respect to any Person (other than an individual), (i) the certificate or articles of association or incorporation or organization or limited partnership or limited liability company, and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (ii) all bylaws, regulations and similar documents or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented from time to time.

(kkkk) "Out-License" means each license, settlement agreement or other agreement or arrangement between the Surviving Company or any of its Affiliates and any third party pursuant to which the Surviving Company or any of its Affiliates grants a license, sublicense or similar grant of any Intellectual Property Right that is necessary for the Exploitation of a Covered Product.

(llll) "Patent Rights" means all patents, patent applications, utility models, design registrations and certificates of invention and other governmental grants for the protection of inventions or industrial designs (including all related continuations, continuations-in-part, divisionals, reissues and reexaminations).

(mmmm) "Permitted Alternative Payee" means, with respect to any Participating Securityholder, (i) any Affiliate of such Participating Securityholder; (ii) any transferee pursuant to a transfer made by operation of law (including pursuant to a consolidation or merger) or without consideration in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity; (iii) any direct or indirect beneficial owner of such Participating Securityholder (including through an intermediary) that is a transferee of such Participating Securityholder, by distribution or otherwise, which beneficial owner may be a limited partner, member, or other equity holder of such Participating Securityholder; (iv) any transferee pursuant to a court ordered transfer (such as in connection with divorce, bankruptcy or liquidation); (v) in the case of any such Participating Securityholder that is a nominee, any successor nominee that is a transferee from such Participating Securityholder for the same beneficial owner, which beneficial owner may be a limited partner, member, or other equity holder; (vi) in the case of any such Participating Securityholder that is an individual, any one of the following: (w) any transferee upon the death of such Participating Securityholder by will or the laws of intestacy; (x) any spouse or lineal descendant of such Person; (y) such Person's estate; and (z) a trust, all of the beneficiaries of which are such Person or such Person's spouse and/or lineal descendants; (vii) in the case of any such Participating Securityholder that is a trust, the beneficiaries of such trust or a trust for the benefit of one or more such beneficiaries of such trust, *provided*, that the beneficiaries are Permitted Alternative Payees of such Participating Securityholder who created the trust; and (viii) in the case of any such Participating Securityholder that is an estate, (A) the decedent's Permitted Alternative Payees or (B) a trust for one or more of the decedent's Permitted Alternative Payees; *provided*, *further*, that, in the case of each of the foregoing clauses (i) through (viii), no Person shall be a Permitted Alternative Payee if such Person is an Excluded Alternative Payee.

(nnnn) "Permitted Liens" means (i) Liens of landlords, carriers, warehousemen, mechanics, vendors, materialmen or other Persons securing obligations arising in the Ordinary Course of Business that are not yet due and payable, (ii) Liens incurred in the Ordinary Course of Business in connection with workers' compensation, unemployment insurance and other types of social security, (iii) Liens incurred to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and similar obligations in the Ordinary Course of Business, (iv) Liens for Taxes not yet due and payable or for Taxes that are being contested in good faith through appropriate proceedings and for which adequate reserves are reflected on the books and records of the applicable Person, (v) Liens incurred in the Ordinary Course of Business and that do not (in any case or in the aggregate) materially detract from the value of the assets subject thereto or materially impair the operations of Merger Partner or Public Company, as applicable, (vi) Liens arising under applicable securities Law and (vii) Liens expressly set forth in Excluded Contracts.

(oooo) "Permitted Settlement" means, with respect to any Person, a settlement by such Person of any pending legal proceeding that: (i) provides for the payment by such Person of money damages not to exceed $50,000.00 in the aggregate and no other relief of any nature; and (ii) includes an unconditional release and waiver of future claims by all plaintiffs in favor of such Person.

(pppp) "Phase 3 Trial" means the Phase 3 clinical trial of D-Fi pursuant to Protocol Number CCB-EB-304.

(qqqq) "Primary Endpoint" means the difference in the proportion of Complete Wound Closure between D-Fi and standard of care confirmed at two consecutive study visits 2 weeks apart, either assessed at Weeks 22 and 24 or at Weeks 24 and 26 ("Primary Endpoint Measurement Time").

(rrrr) "Priority Review" has the meaning set forth at FFDCA § 529 under the Rare Pediatric Disease Priority Review Program.

(ssss) "Priority Review Voucher" or "PRV" means a priority review voucher issued under FFDCA § 529 under the Rare Pediatric Disease Priority Review Program.

(tttt) "Product Application" means an application for Regulatory Approval to research, study, develop, formulate, process, engineer, manufacture, test, use, market, sell, offer for sale and distribute a product or drug in a country or jurisdiction in the Territory, including (a) a new drug application, (b) an investigational new drug application, (c) any corresponding foreign application in any country or jurisdiction in the world, and (d) all supplements, amendments, variations, extensions and renewals thereof that may be filed with respect to the foregoing.

(uuuu) "Product Development Plan" means the clinical trial and other development plans for the Covered Product, furnished to Public Company in the Merger Partner Disclosure Schedule as of the date hereof, as such clinical trial and other development plans may from time to time be modified, amended, amended and restated, and supplemented by the Surviving Company in furtherance of obtaining FDA Approval and Exploiting the Covered Product in the Territory.

(vvvv) "Product Rights" means any and all of the following with respect to the Covered Product that is owned, controlled or licensed by the Surviving Company or any of its Subsidiaries as of the Initial Effective Time, as they exist throughout the Territory: (a) Intellectual Property Rights, (b) regulatory filings, submissions and approvals, with or from any Regulatory Agency with respect to the Covered Product, including all Product Applications, (c) In-Licenses and (d) Out-Licenses.

(wwww) "PRV Interest" means all of the Participating Securityholders' right, title and interest in and to eighty percent (80%) of the PRV Proceeds.

(xxxx) "PRV Proceeds" means the cash purchase price or other consideration actually paid to, or, solely to the extent applicable, in kind value received by, Public Company or any of its Subsidiaries on or after the closing date of the PRV Sale Transaction in consideration for the sale of the Priority Review Voucher issued to the Surviving Company upon approval of the Surviving Company's Biologics License Application for the Covered Product by the FDA, minus the amount of any reasonable, documented third-party expenses (including expenses of outside counsel and other advisors) and Taxes actually incurred by Public Company and its Affiliates in connection with the PRV Sale Transaction; *provided*, that in the event that all or any portion of such proceeds or value are to be paid or received in installments, then the amount of PRV Proceeds shall include installment payments only as and when received by Public Company or any of its Subsidiaries.

(yyyy) "PRV Request" means a request for a Priority Review Voucher in respect of a Covered Product submitted by the Surviving Company to the FDA in connection with the submission of the Biologics License Application for such Covered Product with the FDA.

(zzzz) "PRV Sale Transaction" means the sale, if any, by Public Company or any of its Affiliates of the Priority Review Voucher that has been issued upon approval of the Surviving Company's Biologics License Application for the Covered Product by the FDA.

(aaaaa) "Public Company Closing Price" means the volume weighted average closing trading price of a share of Public Company Common Stock on the NYSE American for the twenty (20) consecutive trading days ending on the last trading day immediately prior to the Closing Date.

(bbbbb) "Public Company Common Stock" means the shares of common stock, $0.0001 par value per share, of Public Company.

(ccccc) "Public Company Convertible Notes" means the senior secured convertible notes of Public Company issued pursuant to the Securities Purchase Agreement, dated as of November 6, 2025, by and among Public Company and the investor parties thereto.

(ddddd) "Public Company Employee Plans" means all Employee Benefit Plans sponsored, maintained, or contributed to (or required to be contributed to), by Public Company or any of its Subsidiaries or with respect to which Public Company or any of its Subsidiaries have any Liability.

(eeeee) "Public Company Intellectual Property" means the Public Company Owned Intellectual Property and the Public Company Licensed Intellectual Property.

(fffff) "Public Company Key Employee" means a current employee of Public Company or its Subsidiaries who is an executive officer of Public Company.

(ggggg) "Public Company Licensed Intellectual Property" means all Intellectual Property that is licensed to Public Company or any of its Subsidiaries by any individual or entity other than Public Company or any of its Subsidiaries, as applicable, excluding any Intellectual Property that is licensed to Public Company or any of its Subsidiaries under Excluded Contracts.

(hhhhh) "Public Company Material Adverse Effect" means any Effect that, individually or in the aggregate with all other Effects that have occurred through the date of determination of the occurrence of a Public Company Material Adverse Effect, has had, or is reasonably likely to have, a material adverse effect on the business, assets and liabilities, financial condition or results of operations of Public Company and its Subsidiaries, taken as a whole; *provided*, *however*, that no Effect, to the extent resulting from or arising out of any of the following, alone or in combination, shall be deemed to be a Public Company Material Adverse Effect or be taken into account for purposes of determining whether a Public Company Material Adverse Effect has occurred or is reasonably likely to occur: (i) changes after the date of this Agreement in prevailing economic or market conditions in the United States or any other jurisdiction (except to the extent those changes have a disproportionate effect on Public Company and its Subsidiaries relative to the other participants in the industry or industries in which Public Company and its Subsidiaries operate), (ii) changes or events after the date of this Agreement affecting the industry or industries in which Public Company and its Subsidiaries operate generally (except to the extent those changes or events have a disproportionate effect on Public Company and its Subsidiaries relative to the other participants in the industry or industries in which Public Company and its Subsidiaries operate), (iii) changes after the date of this Agreement in generally accepted accounting principles or requirements or the interpretation thereof (except to the extent those changes have a disproportionate effect on Public Company and its Subsidiaries relative to the other participants in the industry or industries in which Public Company and its Subsidiaries operate), (iv) changes after the date of this Agreement in Laws, rules or regulations of general applicability or interpretations thereof by any Governmental Entity (except to the extent those changes have a disproportionate effect on Public Company and its Subsidiaries relative to the other participants in the industry or industries in which Public Company and its Subsidiaries operate), (v) any natural disaster, epidemic, pandemic or other disease outbreak or any outbreak of major hostilities or any act of terrorism (except to the extent those changes or events have a disproportionate effect on Public Company and its Subsidiaries relative to the other participants in the industry or industries in which Public Company and its Subsidiaries operate), (vi) a change in the public trading price of Public Company Common Stock or the implications thereof (it being understood that any Effect causing or giving rise to any such change shall be taken into account for purposes of determining whether a Public Company Material Adverse Effect has occurred or is reasonably likely to occur), (vii) the execution, delivery, announcement or performance of the obligations under this Agreement or the announcement, pendency or anticipated consummation of the transactions contemplated by this Agreement, (viii) any failure by Public Company or any of its Subsidiaries to meet any public estimates or expectations of such Person's revenue, earnings or other financial performance or results of operations for any period, (ix) any failure by Public Company or any of its Subsidiaries to meet any internal guidance, budgets, plans or forecasts of such Person's revenues, earnings or other financial performance or results of operations, (x) the taking of any action, or the failure to take any action, by Public Company or any of its Subsidiaries that is expressly required under the terms of this Agreement, and (xi) any stockholder or derivative litigation arising from or relating to this Agreement or the transactions contemplated by this Agreement (but in the case of clauses (vi), (vii), (viii), or (ix), the underlying cause of such changes or failures shall be taken into account for purposes of determining whether a Public Company Material Adverse Effect has occurred or is reasonably likely to occur, unless such changes or failures would otherwise be excepted from this definition).

(iiiii) "Public Company Owned Intellectual Property" means all Intellectual Property owned or purported to be owned by Public Company or any of its Subsidiaries, in whole or in part.

(jjjjj) "Public Company Post-Closing Price" means the volume weighted average closing trading price of a share of Public Company Common Stock on the NYSE American for the twenty (20) consecutive trading days ending on the last trading day immediately prior to the Approval Date.

(kkkkk) "Public Company Products" means the products and services currently being, or contemplated to be, sold or distributed by Public Company or any Subsidiary of Public Company.

(lllll) "Public Company Registrations" means Intellectual Property Registrations that are registered or filed in the name of Public Company or any of its Subsidiaries, or where Public Company or any of its Subsidiaries is the assignee thereof, in each case, alone or jointly with others.

(mmmmm) "Qualified Acquiror" means a COC Acquiror that, as of the consummation of the applicable Change of Control, (a) is engaged in the development, manufacture, commercialization of or investment in pharmaceutical or biotechnology products and that the Public Company Board has determined after due consideration of Public Company's obligations to the Participating Securityholders, acting reasonably and in a manner consistent with its fiduciary duties, has financial and operational resources sufficient to perform and discharge all Article IX Obligations, taking into account the financial and operational resources reasonably expected to become available to such COC Acquiror upon the achievement of any applicable Milestone or the receipt of FDA Approval, as applicable; (b) has its obligations under Article IX and Section 11.8 guaranteed by a Person that satisfies the standard set forth in clause (a) (applied *mutatis mutandis* to such Person), pursuant to an unconditional and irrevocable guarantee of payment and performance (and not merely of collection), under which the Securityholder Representative may proceed directly against such guarantor without first proceeding against, or exhausting any remedy against, such COC Acquiror; or (c) has provided credit support or other assurances for the performance and discharge of the Article IX Obligations that are reasonably acceptable to the Securityholder Representative.

(nnnnn) "Qualified Person" means any Person making a bona fide, unsolicited written Acquisition Proposal that the Public Company Board or the Merger Partner Board, as the case may be, determines in good faith (after consultation with outside counsel and its financial advisors) is, or would reasonably be expected to lead to, a Superior Proposal, and such Acquisition Proposal has not resulted from a material breach by Public Company or Merger Partner, as the case may be, of its obligations under Section 6.1(a).

(ooooo) "Regulatory Agency" means a Governmental Entity with responsibility for the approval, permission or allowance of the research, study, development, formulation, processing, engineering, manufacturing, testing, use, marketing and sale or offering for sale of pharmaceuticals or other regulation of pharmaceuticals in any country.

(ppppp) "Regulatory Approval" means, collectively, all regulatory approvals, licenses, permissions, allowances, registrations, certificates, authorizations, permits and supplements thereto, as well as associated materials (including the product dossier) pursuant to which the Covered Product may be researched, studied, developed, formulated, processed, engineered, manufactured, tested, used, marketed, sold, offered for sale and distributed, in a jurisdiction, issued by the appropriate Regulatory Agency, including, to the extent required by applicable Law for the sale of the Covered Product, all pricing approvals and pricing restrictions, and governmental reimbursement approvals and restrictions.

(qqqqq) "Reorganization Threshold" means forty-five percent (45%).

(rrrrr) "Reporting Period" means each three-month period ending on March 31, June 30, September 30 or December 31 of a calendar year (or any partial such period at the beginning or end of the applicable Reporting Period).

(sssss) "Reserve Amount" means Five Hundred Thousand Dollars ($500,000).

(ttttt) "Share Cap" means a number of shares of Public Company Common Stock equal to Two Hundred Seven Million Dollars ($207,000,000) divided by the Floor Price.

(uuuuu) "Specified Time" means the earliest to occur of (i) the Initial Effective Time, (ii) in the case of Public Company, the date on which the stockholders of Public Company shall have approved the Requisite Public Company Stockholder Approvals, (iii) in the case of Merger Partner, the date on which the Requisite Merger Partner Stockholder Approval shall have been obtained, and (iv) the time at which this Agreement is terminated in accordance with the terms hereof.

(vvvvv) "Subsidiary" means, with respect to a Person, an entity of which more than 50% of the voting power of the equity securities or equity interests is owned, directly or indirectly, by such Person.

(wwwww) "Superior Proposal" means, with respect to Public Company or Merger Partner, any bona fide, unsolicited written Acquisition Proposal (for purposes of this definition, replacing all references in such definition to 15% with 50%), (i) on terms which the board of directors of such party determines in its good faith judgment (after consultation with its financial and outside legal advisors) to be more favorable to the holders of such party's capital stock from a financial point of view than the transactions contemplated by this Agreement, taking into account all the terms and conditions of such proposal and this Agreement, including any termination or break-up fees and conditions to consummation, as well as any written, binding offer by the other party hereto to amend the terms of this Agreement as permitted by Section 6.1(b) that the board of directors of such party determines to be relevant, and (ii) which the board of directors of such party has determined to be reasonably capable of being completed on the terms proposed, taking into account all financial, regulatory, legal and other aspects of such proposal that the board of directors of such party determines to be relevant (including the likelihood and timing of consummation as compared to the transactions contemplated hereby).

(xxxxx) "Tax Advisor" means (i) Eisner Advisory Group LLC, (ii) a "big 4" accounting firm chosen by Public Company or (iii) an independent nationally recognized tax accounting advisor, mutually acceptable (acting reasonably) to Public Company and the Securityholder Representative, engaged by Public Company (which Tax Advisor, for the avoidance of doubt, may vary among the Calculation Dates).

(yyyyy) "Tax Returns" means any and all reports, returns (including information returns), declarations, or statements, including any schedule or attachment thereto and any amendment thereof, filed with, or required to be filed with, a Governmental Entity in connection with the determination, assessment, collection or payment of Taxes.

(zzzzz) "Taxes" means any taxes, charges, fees, duties, contributions, levies or other similar assessments or liabilities in the nature of a tax imposed by a Governmental Entity, including income, gross receipts, corporation, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, estimated, registration, recording, excise, real property, personal property, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, social security, national insurance, business license, business organization, environmental, worker's compensation, payroll, profits, severance, stamp, occupation, windfall profits, customs duties, franchise and other taxes, and any interest, penalties, or additions to tax imposed with respect to such items.

(aaaaaa) "Territory" means worldwide.

(bbbbbb) "Topline Analysis" means analysis of the Primary Endpoint and unblinded safety data after study completion in accordance with the prespecified protocol and statistical analysis plan for the Phase 3 Trial.

(cccccc) "Total Consideration" means, as of an applicable Calculation Date, the total consideration required to be paid in respect of Merger Partner Capital Stock in connection with the Mergers, as determined for purposes of determining whether the "continuity of interest" requirement of a reorganization pursuant to Section 368(a)(1)(A) of the Code has been satisfied. For the avoidance of doubt, Total Consideration shall not include the value of any consideration paid in respect of Merger Partner Options or Merger Partner Warrants (other than Merger Partner Warrants that are exercised or deemed exercised pursuant to Section 2.1(e) and treated as Merger Partner Preferred Stock in accordance with Section 2.1(b)) or any amounts treated as interest under Section 483 or Section 1274 of the Code.

(dddddd) "Total Stock Consideration" means, as of an applicable Calculation Date, the value of Public Company Common Stock issued in respect of Merger Partner Capital Stock in connection with the Mergers, as determined for purposes of determining whether the "continuity of interest" requirement of a reorganization pursuant to Section 368(a)(1)(A) of the Code has been satisfied. For the avoidance of doubt, Total Stock Consideration shall not include the value of any consideration paid in respect of Merger Partner Options or Merger Partner Warrants (other than Merger Partner Warrants that are exercised or deemed exercised pursuant to Section 2.1(e) and treated as Merger Partner Preferred Stock in accordance with Section 2.1(b)) or any amounts treated as interest under Section 483 of the Code.

(eeeeee) "Total Stock Consideration Percentage" means the quotient obtained by dividing (i) the Total Stock Consideration by (ii) the Total Consideration.

(ffffff) "Trademarks" means all registered trademarks and service marks, logos, Internet domain names, social media accounts and identifiers, corporate names and doing business designations and all registrations and applications for registration of the foregoing, common Law trademarks and service marks and trade dress.

(gggggg) "Transaction Expenses" means, with respect to Public Company and its Subsidiaries or Merger Partner and the Merger Partner Subsidiary, as applicable and without duplication, the sum of (i) all premiums, underwriting costs, brokerage commissions, and costs and expenses incurred by such party, (ii) all costs, fees and expenses incurred by such party at or prior to the Initial Effective Time in connection with the negotiation, preparation and execution of this Agreement or any agreements, documents, certificates, opinions or other items contemplated hereby, including the Concurrent Financing, the Bridge Financing and the consummation of the Mergers or the other transactions contemplated hereby, and (iii) any Liabilities arising from (1) any sale, retention, change of control, transaction or similar payment or benefit or any severance or other termination-related payment or benefit that is or may become payable to any current or former director, officer, employee or individual service provider as a result of or in connection with the execution of this Agreement or the consummation of the transactions contemplated by this Agreement, (2) any accrued but unpaid bonuses, severance, retirement plan contributions, and vacation or paid time off and (3) the employer portion of any payroll or similar Taxes payable with respect to any of the foregoing, in each case, that are unpaid as of the Initial Effective Time, including brokerage fees and commissions, finders' fees or financial advisory fees payable by such Person at or prior to the Initial Effective Time.

(hhhhhh) "TTM Period" means any consecutive twelve (12) month period following the Closing.

(iiiiii) "Worker" means any individual who is an officer, director, employee (regular, temporary, part-time or otherwise), consultant or independent contractor of Merger Partner or Public Company or any of its Subsidiaries, as applicable.

(jjjjjj) Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated:

2025 Audited Financial Statements	Section 6.15
280G Approval	Section 6.10(f)
280G Waiver	Section 6.10(f)
401(k) Plan	Section 6.10(d)
ACA	Section 3.14(b)
Acceptable PRV Sale Terms	Section 9.3(c)
Accounting Firm	Section 9.4(b)
Adjustment Contingent Shares	Section 9.8(a)
Affiliate	Section 3.2(c)
Agreement	Preamble
Allocation Schedule	Section 9.7(a)
Alternative Acquisition Agreement	Section 6.1(b)(ii)
Anticipated Closing Date	Section 6.14
Antitrust Laws	Section 6.5(c)
Approval Date	Section 9.2(a)
Article IX Obligations	Section 9.5(d)
Bankruptcy and Equity Exception	Section 3.4(a)
Base Contingent Share Number	Section 11.18(r)(i)
Bradley	Section 6.17(a)
Bridge Financing	Recitals
Bridge Notes	Recitals
Calculation Date	Section 9.8(a)
Certificate	Section 2.2(b)(i)
Claim Notice	Section 10.4(a)
Clinical Milestone Payment	Section 9.1(a)(i)
Closing	Section 1.3
Closing Date	Section 1.3
Closing Merger Partner Merger Shares Allocation Schedule	Section 6.14
Commercial Sale Milestone	Section 9.1(a)(ii)
Commercial Sale Milestone Payment	Section 9.1(a)(ii)
Concurrent Financing	Recitals
Confidentiality Agreement	Section 5.3
Consideration Matters	Section 10.2(c)
Contingent Cash Payment	Section 9.8

Contingent Consideration Equivalent	Section 11.18(r)(ii)
Contingent Payment Adjustment Notice	Section 9.8(d)
Contingent Shares Allocation Schedule	Section 9.2(b)
Continuing Employee	Section 6.10(a)
De Minimis Threshold	Section 10.5(a)
D-Fi Expiration Time	Section 9.2(a)
D-Fi Net Sales Statement	Section 9.1(b)(i)
DGCL	Recitals
Direct Claim	Section 10.4(d)
Direct Claim Dispute Notice	Section 10.4(e)
Direct Claim Notice	Section 10.4(d)
Disclosure Schedule	Section 11.16
Dispute Notice	Section 9.4(a)
Dissenting Shares	Section 2.3
DLLCA	Recitals
Draft Closing Merger Partner Merger Shares Allocation Schedule	Section 6.14
Effect	Section 11.18(lll)
Escrow Agent	Section 10.9
Escrow COC Consideration	Section 11.8(b)(i)
Escrow Share Value	Section 10.10
Exchange Act	Section 3.4(c)
Exchange Agent	Section 2.2(a)
Exchange Agent Agreement	Section 2.2(a)
Exchange Fund	Section 2.2(a)
Excluded Matter	Section 10.4(b)
Expiration Date	Section 10.1
FDA	Section 3.16(a)
FDA Approval Notice	Section 9.2(a)
Financial Statements	Section 3.5(a)
First Certificate of Merger	Section 1.1
First Merger	Recitals
First Revenue Milestone	Section 9.1(a)(iii)
First Revenue Milestone Payment	Section 9.1(a)(iii)
Form S-4	Section 6.4(b)
GAAP	Section 3.5(a)
Governmental Entity	Section 3.4(c)
IND	Section 3.16(a)
Indemnified Party	Section 10.4(a)
Indemnified Persons	Section 6.8(a)
Indemnifying Party	Section 10.4(a)
Initial Effective Time	Section 1.1
Intended Tax Treatment	Recitals
Letter of Transmittal	Section 2.2(b)(i)
Liens	Section 3.4(b)
Maximum Amount	Section 6.8(b)
Merger Partner	Preamble
Merger Partner Authorizations	Section 3.16(b)
Merger Partner Board	Recitals
Merger Partner Board Recommendation Change	Section 6.1(b)(i)
Merger Partner Designees	Section 1.7(a)
Merger Partner Disclosure Schedule	Article III
Merger Partner Indemnified Party	Section 10.3(a)

Merger Partner Information Statement	Section 6.4(d)
Merger Partner Insurance Policies	Section 3.18
Merger Partner IT Systems	Section 3.24(a)
Merger Partner Leases	Section 3.9(b)
Merger Partner Stockholder Approvals	Section 3.4(a)
Merger Partner Stockholder Solicitation Materials	Section 6.4(c)
Merger Partner Subsidiary	Section 3.3(a)
Merger Partner VAR	Section 3.2(b)
Merger Partner Written Consent	Section 6.4(c)
Merger Sub	Preamble
Merger Sub II	Preamble
Merger Subs	Preamble
Mergers	Recitals
Milestone Achievement Notice	Section 9.1(c)(i)
Milestone Payment Allocation Schedule	Section 9.1(c)(i)
Most Recent Balance Sheet	Section 3.5(a)
Most Recent Balance Sheet Date	Section 3.5(a)
NYSE American Listing Application	Section 4.4(c)
Open Source Materials	Section 3.10(m)
Outside Date	Section 8.1(b)
Participating Securityholder	Section 6.14
Participating Securityholders	Section 6.14
Pending Claim	Section 10.12
Permits	Section 3.16(a)
Primary Endpoint Measurement Time	Section 11.18(qqqq)
Privileged Communications	Section 6.17(c)
PRV Interest Allocation Schedule	Section 9.3(d)
PRV Sale Transaction Notice	Section 9.3(d)
Public Company	Preamble
Public Company 2023 Plan	Section 4.2(b)
Public Company 2026 Plan	Section 4.2(b)
Public Company Authorizations	Section 4.15(a)
Public Company Balance Sheet	Section 4.5(b)
Public Company Board	Recitals
Public Company Board Recommendation Change	Section 6.1(b)(i)
Public Company Disclosure Schedule	Article IV
Public Company Equity Awards	Section 4.2(b)
Public Company Financial Advisor	Section 4.19
Public Company Indemnified Party	Section 10.2
Public Company Insurance Policies	Section 4.16
Public Company IT Systems	Section 4.26(a)
Public Company Leases	Section 4.9(b)
Public Company Preferred Stock	Section 4.2(a)
Public Company PSU Awards	Section 4.2(b)
Public Company RSU Awards	Section 4.2(b)
Public Company SEC Reports	Section 4.5(a)
Public Company Series A Preferred Stock	Section 4.2(a)
Public Company Series B Preferred Stock	Section 1.7(b)
Public Company Series C Preferred Stock	Section 4.2(a)
Public Company Stock Option	Section 4.2(b)
Public Company Stock Options	Section 4.2(b)

Public Company Stock Plans	Section 4.2(b)
Public Company Warrants	Section 4.2(c)
Public Company Written Consent	Section 6.4(a)
Recommendation Change Notice	Section 6.1(b)
Regulating Authorities	Section 3.16(a)
Related Party	Section 11.18(v)
Relevant Matters	Section 11.11
Representatives	Section 6.1(a)
Requisite Merger Partner Stockholder Approval	Section 3.4(d)
Requisite Public Company Stockholder Approvals	Section 4.4(d)
Reserve Account	Section 11.17(e)
Resolution Period	Section 9.4(b)
Revenue Milestones	Section 9.1(a)(v)
SDN	Section 11.18(gg)
SDN List	Section 11.18(gg)
SEC	Section 3.4(c)
Second Certificate of Merger	Section 1.2
Second Effective Time	Section 1.2
Second Merger	Recitals
Second Revenue Milestone	Section 9.1(a)(iv)
Second Revenue Milestone Payment	Section 9.1(a)(iv)
Securities Act	Section 3.2(c)
Securities Purchase Agreement	Recitals
Security Holder Litigation	Section 6.12
Securityholder Representative	Preamble
Securityholder Representative Group	Section 11.17(d)
Series B Certificate of Designation	Section 1.7(b)
Share Issuances	Recitals
Surviving Company	Section 1.5
Surviving Corporation	Section 1.4
Third Revenue Milestone	Section 9.1(a)(v)
Third Revenue Milestone Payment	Section 9.1(a)(v)
Third-Party Claim	Section 10.4(a)
Threshold	Section 10.5(a)
Transactions	Section 6.17(a)
Transition Services Agreement	Section 6.19
WARN Act	Section 3.17(e)

[Remainder of Page Intentionally Left Blank]

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

PELTHOS THERAPEUTICS INC.

By: /s/ John M. Gay
Name: John M. Gay
Title: Chief Financial Officer, Treasurer and Secretary

CREDIT CARD MERGER SUB, INC.

By: /s/ John M. Gay
Name: John M. Gay
Title: Chief Financial Officer, Treasurer and Secretary

CREDIT CARD MERGER SUB II, LLC

By: /s/ John M. Gay
Name: John M. Gay
Title: Chief Financial Officer, Treasurer and Secretary

[*Signature Page to Agreement and Plan of Merger*]

CASTLE CREEK BIOSCIENCES, INC.

By: /s/ Jude M. Sullivan
Name: Jude M. Sullivan
Title: General Counsel and Assistant Secretary

[*Signature Page to Agreement and Plan of Merger*]

PARAGON BIOSCIENCES, LLC

By: /s/ Patrick J. Morris
Name: Patrick J. Morris
Title: Executive Vice President, Legal Affairs and General Counsel

[*Signature Page to Agreement and Plan of Merger*]

Exhibit 3.1

FORM OF CERTIFICATE OF DESIGNATION OF SERIES B CONVERTIBLE PREFERRED STOCK OF PELTHOS THERAPEUTICS INC.

The Certificate of Designation of the Series B Convertible Preferred Stock of Pelthos Therapeutics Inc., a Nevada corporation (the "**Company**") is set forth as follows:

WHEREAS, pursuant to the authority expressly conferred upon the Board of Directors of the Company (the "**Board**") by the Company's Articles of Incorporation (as amended and/or restated from time to time, the "**Articles of Incorporation**"), and Nevada Revised Statutes ("**NRS**") 78.1955, the Board, on October 29, 2026, determined that it is advisable and in the best interests of the Company and its stockholders for the Company to adopt a certificate of designation in accordance with the terms of the 2026 Securities Purchase Agreement (as defined below) to create a new series of preferred stock comprised of 150,000 shares designated as "Series B Convertible Preferred Stock", to be issued pursuant to and in accordance with the terms of the 2026 Securities Purchase Agreement:

RESOLVED, that pursuant to the authority vested in the Board, in accordance with the provisions of the Articles of Incorporation and NRS 78.1955, this Certificate of Designation is hereby adopted and approved (the "**Certificate of Designation**") to establish a new series of preferred stock, par value $0.0001 per share, of the Company designated as "Series B Convertible Preferred Stock", and setting forth the designation and number of shares of the Series B Convertible Preferred Stock and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series and the qualifications, limitations and restrictions thereof, as follows:

SERIES B CONVERTIBLE PREFERRED STOCK

1. Designation and Number of Shares. There shall hereby be created and established out of the authorized and unissued shares of the preferred stock of the Company a series of preferred stock of the Company designated as "Series B Convertible Preferred Stock" (the "**Series B Convertible Preferred Stock**", and the shares of such series, the "**Preferred Shares**"). The authorized number of shares of Series B Convertible Preferred Stock shall be 150,000 shares; *provided, however* that, by resolution of the Board, the number of authorized shares of Series B Convertible Preferred Stock may hereafter be reduced to a number that is not less than the number of shares of Series B Convertible Preferred Stock then outstanding or issuable pursuant to the 2026 Securities Purchase Agreement. Each Preferred Share shall have a par value of $0.0001 per share. Capitalized terms not defined herein shall have the meaning as set forth in Section 29 below.

2. Dividends. In addition to Section 5 or Section 11 below, from and after the first date of issuance of any Preferred Shares (the "**Initial Issuance Date**"), each holder of a Preferred Share (each, a "**Holder**" and collectively, the "**Holders**") shall be entitled to receive dividends and other distributions ("**Dividends**") when and as declared by the Board, from time to time, in its sole discretion, which Dividends shall be paid by the Company out of funds legally available therefor, payable, subject to the conditions and other terms hereof, in cash on the Stated Value of such Preferred Share.

3. Conversion. At any time after the Initial Issuance Date, each Preferred Share shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below) (the "**Conversion Shares**"), on the terms and subject to the conditions set forth in this Section 3.

(a) Holder's Conversion Right. Subject to the provisions of Section 3(d), at any time or times on or after the Initial Issuance Date, each Holder shall be entitled to convert any portion of the outstanding Preferred Shares held by such Holder into validly issued, fully paid and non-assessable Conversion Shares in accordance with Section 3(c) at the Conversion Rate (as defined below). The Company shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Company's transfer agent (the "**Transfer Agent**")) that may be payable with respect to the issuance and delivery of Conversion Shares upon conversion of any Preferred Shares, except for any tax or duty that is due because such Holder requests those shares to be registered in a name other than such Holder's name (or any broker of the Holder).

(b) Conversion Rate. The number of Conversion Shares issuable upon conversion of any Preferred Share pursuant to this Section 3 shall be determined by dividing (x) the Conversion Amount of such Preferred Share by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means, with respect to each Preferred Share, as of the applicable date of determination, the sum of (1) the Stated Value thereof plus (2) any Additional Amount thereon as of such date of determination plus (3) any other amounts owed to such Holder pursuant to this Certificate of Designation or any other Transaction Document.

(ii) "**Conversion Price**" means, with respect to each Preferred Share, as of any Conversion Date or other date of determination, $19.67, subject to adjustment as provided herein.

(c) Mechanics of Conversion. The conversion of each Preferred Share shall be conducted in the following manner:

(i) Optional Conversion. To convert a Preferred Share into Conversion Shares on any date (a "**Conversion Date**"), a Holder shall deliver (whether via electronic mail or otherwise) to the Company, for receipt on or prior to 5:00 p.m., New York City time, on such date, a copy of an executed notice of conversion of the share(s) of Series B Convertible Preferred Stock subject to such conversion in the form attached hereto as **Exhibit I** (the "**Conversion Notice**") to the Company, which Conversion Notice must specify the number of shares of Series B Convertible Preferred Stock to be converted. If required by Section 3(c)(iii), within two (2) Trading Days following a conversion of any such Preferred Shares as aforesaid, such Holder shall surrender to a nationally recognized overnight delivery service for delivery to the Company the original certificates, if any, representing the Preferred Shares (the "**Preferred Share Certificates**") if so converted as aforesaid (or an indemnification undertaking with respect to the Preferred Shares in the case of its loss, theft or destruction as contemplated by Section 16(b)). On the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment of confirmation and representation as to whether such shares of Common Stock may then be resold pursuant to Rule 144 (as defined in the 2026 Securities Purchase Agreement) or an effective and available registration statement, in the form attached hereto as **Exhibit II**, of receipt of such Conversion Notice to such Holder and the Transfer Agent, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms set forth herein. On or before the first (1st) Trading Day following each Trading Day on which the Company has received a Conversion Notice (the "**Share Delivery Deadline**"), the Company shall (1) provided that the Transfer Agent is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program ("**FAST**") and such shares of Common Stock (i) (A) may then be sold by the applicable Holder pursuant to an available and effective registration statement and (B) such Holder provides such documentation or other information evidencing the sale of the shares of Common Stock as the Company, the Transfer Agent or legal counsel to the Company shall reasonably request or (ii) are eligible to be resold by the Holder without further condition (including current public information requirements) pursuant Rule 144 (the "**Resale Eligibility Conditions**"), instruct the Transfer Agent to credit such aggregate number of Conversion Shares to which such Holder shall be entitled pursuant to such conversion to such Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian ("**DWAC**") system upon receipt of such Holder's broker's request through DTC's DRS/DWAC system, or (2) if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, upon the request of such Holder, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such Holder or its designee, for the number of Conversion Shares to which such Holder shall be entitled. If the number of Preferred Shares represented by the Preferred Share Certificate(s) submitted for conversion pursuant to Section 3(c)(iii) is greater than the number of Preferred Shares being converted, then the Company or the Transfer Agent shall, as soon as practicable and in no event later than two (2) Trading Days after receipt of the Preferred Share Certificate(s) and at the Company's expense, issue and deliver to such Holder (or its designee) by overnight courier service a new Preferred Share Certificate or a new Book-Entry (in either case, in accordance with Section 16(c)) representing the number of Preferred Shares not converted. The Person or Persons entitled to receive the Conversion Shares issuable upon a conversion of Preferred Shares shall be treated for all purposes as the record holder or holders of such Conversion Shares on the Conversion Date; provided, that such Person shall be deemed to have waived any voting rights of any such Conversion Shares that may arise with respect to any record date during the period commencing on such Conversion Date, through, and including, such applicable Share Delivery Deadline (each, a "**Conversion Period**"), as necessary, such that the aggregate voting rights of any Common Stock (including such Conversion Shares) beneficially owned by such Person and/or any of its Attribution Parties, collectively, on any such record date shall not exceed the Maximum Percentage (as defined below) as a result of any such conversion of such applicable Preferred Shares with respect thereto. Notwithstanding anything to the contrary contained in this Certificate of Designation or the Registration Rights Agreement, after the effective date of a Registration Statement (as defined in the Registration Rights Agreement) and prior to a Holder's receipt of the notice of a Suspension Period (as defined in the Registration Rights Agreement), the Company shall use reasonable best efforts to cause the Transfer Agent to deliver unlegended Conversion Shares to such Holder (or its designee) in connection with any sale of Registrable Securities (as defined in the Registration Rights Agreement) with respect to which such Holder has entered into a contract for sale, and delivered a copy of the prospectus included as part of the particular Registration Statement to the extent applicable, prior to the Holder's receipt of such notice and for which such Holder has not yet settled, subject to receipt by the Company of customary representations and other documentation reasonably acceptable to the Company in connection therewith.

(ii) Company's Failure to Timely Convert. If the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, to issue and deliver to such Holder (or its designee) a certificate for the number of Conversion Shares to which such Holder is entitled and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, to credit such Holder's or its designee's balance account with DTC upon receipt of such Holder's broker request through DTC's DRS/DWAC system for such number of Conversion Shares to which such Holder is entitled upon such Holder's conversion of any Conversion Amount (as the case may be) (a "**Conversion Failure**") and, after the occurrence of at least three (3) Conversion Failures then, in addition to all other remedies available to such Holder, the Company shall pay in cash to such Holder on each day after the Share Delivery Deadline that the issuance of such Conversion Shares is not timely effected an amount equal to 0.5% of the product of (A) the sum of the number of Conversion Shares not issued to such Holder on or prior to the Share Delivery Deadline and to which such Holder is entitled, multiplied by (B) the average VWAP of the Common Stock during the period beginning on the applicable Conversion Date and ending on the applicable Share Delivery Deadline, and such Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, all, or any portion, of such Preferred Shares that has not been converted pursuant to such Conversion Notice; provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline either (A) the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, the Company shall fail to issue and deliver to such Holder (or its designee) a certificate and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, the Transfer Agent shall fail to credit the balance account of such Holder or such Holder's designee, as applicable, with DTC upon receipt of such Holder's broker request through DTC's DRS/DWAC system, for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (i) above, and if on or after such Share Delivery Deadline such Holder acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of Conversion Shares issuable upon such conversion that such Holder is entitled to receive from the Company and has not received from the Company in connection with such Conversion Failure (a "**Buy-In**"), then, in addition to all other remedies available to such Holder, the Company shall, in such Holder's discretion as set forth in a written request to the Company (which may be an e-mail), either: (I) within two (2) Business Days after receipt of such Holder's request pay cash to such Holder in an amount equal to such Holder's total purchase price (including brokerage commissions, stock loan costs and other out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of such Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such Conversion Shares) or credit to the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) (and to issue such Conversion Shares) shall terminate and such shares shall be cancelled, provided that, in lieu of paying the Buy-In Price in cash, the Company may, at its option, promptly reissue (if surrendered) the number of Preferred Shares equal to the number of Preferred Shares submitted for conversion (in which case, such Conversion Notice shall be deemed rescinded and the Company's obligation to issue such Conversion Shares shall terminate and be cancelled) and increase the Additional Amount with respect to such Preferred Shares, pro rata per share, by the amount of such applicable Buy-In Payment Amount (as defined below), or (II) within two (2) Business Days after receipt of such Holder's request, promptly honor its obligation to so issue such Conversion Shares on the Company's share register or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC upon receipt of such Holder's broker request through DTC's DRS/DWAC system for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the average VWAP of the Common Stock during the period commencing on the date of the applicable Conversion Notice and ending on the applicable Share Delivery Deadline (each, a "**Buy-In Payment Amount**"), provided, that in lieu of paying the Buy-In Payment Amount in cash, the Company may, at its election, increase the Additional Amount with respect to such Preferred Shares, pro rata per share, by the amount of such applicable Buy-In Payment Amount. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing Conversion Shares (or to electronically deliver such Conversion Shares) upon the conversion of the Preferred Shares as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Conversion Failure, as applicable, this Section 3(c)(ii) shall not apply to a Holder to the extent the Company has already paid such amounts in full to such Holder with respect to such Delivery Failure, pursuant to the analogous sections of the 2026 Securities Purchase Agreement, or to the extent the Company has paid cash in lieu of delivering Authorized Failure Shares as set forth in Section 8(b).

(iii) Registration; Book-Entry. At the time of issuance of any Preferred Shares hereunder, the applicable Holder may, by written request (including by electronic-mail) to the Company, elect to receive such Preferred Shares in the form of one or more Preferred Stock Certificates or in Book-Entry form. The Company (or the Transfer Agent, as custodian for the Preferred Shares) shall maintain a register (the "**Register**") for the recordation of the names and addresses of the Holders of each Preferred Share and the Stated Value of the Preferred Shares and whether the Preferred Shares are held by such Holder in Preferred Stock Certificates or in Book-Entry form (the "**Registered Preferred Shares**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and each Holder of the Preferred Shares shall treat each Person whose name is recorded in the Register as the owner of a Preferred Share for all purposes (including, without limitation, the right to receive payments and Dividends hereunder) notwithstanding notice to the contrary. A Registered Preferred Share may be assigned, transferred or sold only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell one or more Registered Preferred Shares by such Holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Preferred Shares in the same aggregate Stated Value as the Stated Value of the surrendered Registered Preferred Shares to the designated assignee or transferee pursuant to Section 16, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of such Registered Preferred Shares within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 3, following conversion of any Preferred Shares in accordance with the terms hereof, the applicable Holder shall not be required to physically surrender such Preferred Shares held in the form of a Preferred Share Certificate to the Company unless (A) the full or remaining number of Preferred Shares represented by the applicable Preferred Share Certificate are being converted (in which event such certificate(s) shall be delivered to the Company as contemplated by this Section 3(c)(iii)) or (B) such Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Preferred Shares upon physical surrender of the applicable Preferred Share Certificate. Each Holder and the Company shall maintain records showing the Stated Value and Dividends converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to such Holder and the Company, so as not to require physical surrender of a Preferred Share Certificate upon conversion. If the Company does not update the Register to record such Stated Value and Dividends converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) within one (1) Business Day of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence. In the event of any dispute or discrepancy, such records of such Holder establishing the number of Preferred Shares to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. A Holder and any transferee or assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Preferred Shares, the number of Preferred Shares represented by such certificate may be less than the number of Preferred Shares stated on the face thereof. Each Preferred Share Certificate shall bear the following legend:

> ANY TRANSFEREE OR ASSIGNEE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATION RELATING TO THE SHARES OF SERIES B CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 3(c)(iii) THEREOF. THE NUMBER OF SHARES OF SERIES B CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF SHARES OF SERIES B CONVERTIBLE PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THE CERTIFICATE OF DESIGNATION RELATING TO THE SHARES OF SERIES B CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE.

(iv) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one Holder for the same Conversion Date and the Company can convert some, but not all, of such Preferred Shares submitted for conversion, the Company shall convert from each Holder electing to have Preferred Shares converted on such date a pro rata amount of such Holder's Preferred Shares submitted for conversion on such date based on the number of Preferred Shares submitted for conversion on such date by such Holder relative to the aggregate number of Preferred Shares submitted for conversion on such date. In the event of a dispute as to the number of Conversion Shares issuable to a Holder in connection with a conversion of Preferred Shares, the Company shall issue to such Holder the number of Conversion Shares not in dispute and resolve such dispute in accordance with Section 21.

(d) Limitation on Beneficial Ownership. The Company shall not effect the conversion of any of the Preferred Shares held by a Holder, and such Holder shall not have the right to convert any of the Preferred Shares held by such Holder pursuant to the terms and conditions of this Certificate of Designation and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, such Holder together with its Attribution Parties collectively would beneficially own in excess of the percentage contemplated on such Holder's signature page to the 2026 Securities Purchase Agreement (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Holder and its Attribution Parties shall include the number of shares of Common Stock held by such Holder and all of its Attribution Parties plus the number of shares of Common Stock issuable upon conversion of the Preferred Shares with respect to which the determination of such sentence is being made and any shares of Common Stock issuable upon conversion of any shares of Series A Convertible Preferred Stock held by such Holder, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Preferred Shares beneficially owned by such Holder or any of its Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes, convertible preferred stock or warrants, including shares of Series A Convertible Preferred Stock and the Preferred Shares) beneficially owned by such Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3(d). For purposes of this Section 3(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For the avoidance of doubt, the calculation of the Maximum Percentage shall take into account the concurrent exercise and/or conversion, as applicable, of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such Holder and/or any other Attribution Party, as applicable. For purposes of determining the number of outstanding shares of Common Stock a Holder may acquire upon the conversion of such Preferred Shares without exceeding the Maximum Percentage, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify such Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause such Holder's beneficial ownership, as determined pursuant to this Section 3(d), to exceed the Maximum Percentage, such Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of any Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including such Preferred Shares, by such Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to a Holder upon conversion of such Preferred Shares results in such Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which such Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and such Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, any Holder may from time to time increase (with such increase not effective until the sixty-first (61^{st}) day after delivery of such notice) or decrease the Maximum Percentage of such Holder to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to such Holder and its Attribution Parties and not to any other Holder that is not an Attribution Party of such Holder. For purposes of clarity, the shares of Common Stock issuable to a Holder pursuant to the terms of this Certificate of Designation in excess of the Maximum Percentage shall not be deemed to be beneficially owned by such Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert such Preferred Shares pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall not be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3(d) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3(d) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be amended, modified or waived and shall apply to each successor holder of such Preferred Shares.

4. Rights Upon Fundamental Transactions.

(a) Assumption. Upon the occurrence of any Fundamental Transaction, other than a Fundamental Transaction consummated solely in cash or a strategic acquisition effected through a subsidiary of the Company, the Successor Entity shall succeed to, and (if the successor entity is not the Company) be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein and therein. In addition to the foregoing, upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to each Holder confirmation that there shall be issued upon conversion of the Preferred Shares at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the conversion of the Preferred Shares prior to such Fundamental Transaction, such securities, cash, assets or other property which each Holder would have been entitled to receive upon the happening of such Fundamental Transaction had all the Preferred Shares held by each Holder been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of the Preferred Shares contained in this Certificate of Designation), as adjusted in accordance with the provisions of this Certificate of Designation; provided that if there is no change to the securities, cash, assets or other property which each Holder would be entitled to receive as a result of such Fundamental Transaction, no such confirmation shall be required. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion or redemption of the Preferred Shares.

5. Rights Upon Issuance of Purchase Rights and Other Corporate Events.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 6 and Section 11 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Stock (the "**Purchase Rights**"), then each Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of all the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares and assuming for such purpose that all the Preferred Shares were converted at the Conversion Price as of the applicable record date) held by such Holder immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights; provided, however, to the extent that such Holder's right to participate in any such Purchase Right would result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Purchase Right to such extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent of any such excess) and such Purchase Right to such extent shall be held in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable) for the benefit of such Holder until the earlier of (i) such time or times, if ever, as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times such Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable)) to the same extent as if there had been no such limitation and (ii) the twelve (12) month anniversary of the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(b) Other Corporate Events. Without duplication of any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive cash, securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to ensure that each Holder will thereafter have the right to receive upon a conversion of all the Preferred Shares held by such Holder such cash, securities or other assets to which such Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by such Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares set forth in this Certificate of Designation). Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Series B Required Holders. The provisions of this Section 5 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of the Preferred Shares set forth in this Certificate of Designation.

6. Rights Upon Issuance of Other Securities.

(a) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 4 or Section 5, if the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Section 4 or Section 5, if the Company at any time on or after the Subscription Date combines (by any stock split, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 6 shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 6 occurs during the period that a Conversion Price is calculated hereunder, then the calculation of such Conversion Price shall be adjusted appropriately to reflect such event.

(b) Calculations. All calculations under this Section 6 shall be made by rounding to the nearest cent or the nearest $1/100^{th}$ of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(c) Voluntary Adjustment by Company. Subject to the rules and regulations of the Principal Market, the Company may at any time any Preferred Shares remain outstanding, with the prior written consent of the Series B Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board.

7. Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its Articles of Incorporation, the bylaws of the Company, as amended and/or restated from time to time ("**Bylaws**") or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designation, and will at all times in good faith carry out all the provisions of this Certificate of Designation and take all action as may be required to protect the rights of the Holders hereunder. Without limiting the generality of the foregoing or any other provision of this Certificate of Designation or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon the conversion of any Preferred Shares above the Conversion Price then in effect, (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of Preferred Shares and (c) shall, so long as any Preferred Shares are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Preferred Shares, the maximum number of shares of Common Stock as shall from time to time be necessary to effect the conversion of the Preferred Shares then outstanding (without regard to any limitations on conversion contained herein). Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Initial Issuance Date, each Holder is not permitted to convert such Holder's Preferred Shares in full for any reason (other than pursuant to restrictions set forth in Section 3(d) hereof), the Company shall use its best efforts to promptly remedy such failure, including, without limitation, obtaining such consents or approvals as necessary to effect such conversion into shares of Common Stock.

8. Authorized Shares.

(a) Reservation. So long as any Preferred Shares remain outstanding, the Company shall at all times reserve at least 100% of the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Preferred Shares then outstanding (without regard to any limitations on conversions) (the "**Required Reserve Amount**"). The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the Holders based on the number of the Preferred Shares held by each Holder on the Initial Issuance Date or increase in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event that a Holder shall sell or otherwise transfer any of such Holder's Preferred Shares, each transferee shall be allocated a pro rata portion of such Holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Preferred Shares shall be allocated to the remaining Holders of Preferred Shares, pro rata based on the number of the Preferred Shares then held by the Holders. Notwithstanding the foregoing, a Holder may allocate its Authorized Share Allocation to any other of the securities of the Company held by such Holder (or any of its designees) by delivery of a written notice to the Company.

(b) Insufficient Authorized Shares. If, notwithstanding Section 8(a) and not in limitation thereof, at any time while any of the Preferred Shares remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Preferred Shares at least a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Preferred Shares then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than one-hundred twenty (120) days after the occurrence of such Authorized Share Failure (the "**Shareholder Approval Deadline**"), the Company shall hold a meeting of its shareholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each shareholder with a proxy statement and shall use its reasonable best efforts to solicit its shareholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the shareholders that they approve such proposal (or, if a majority of the voting power then in effect of the capital stock of the Company consents in writing to such increase, in lieu of such proxy statement, deliver to the shareholders of the Company an information statement on Schedule 14C that has been filed with (and either approved by or not subject to comments from) the SEC with respect thereto). Notwithstanding the foregoing, if at any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding shares of Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. In the event that after such Shareholder Approval Deadline, the Company is prohibited from issuing shares of Common Stock to a Holder upon any conversion due to the failure by the Company to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailable number of shares of Common Stock, the "**Authorized Failure Shares**"), at any time after the Shareholder Approval Deadline (to the extent any Authorized Share Failure exists as of such time of determination) in lieu of delivering such Authorized Failure Shares to such Holder, the Company shall pay cash in exchange for the redemption of such portion of the Conversion Amount of the Preferred Shares convertible into such Authorized Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorized Failure Shares and (y) the average VWAP of the Common Stock during the period commencing on the date such Holder delivers the applicable Conversion Notice with respect to such Authorized Failure Shares to the Company and ending on the applicable Share Delivery Deadline; and (ii) to the extent such Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of Authorized Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of such Holder incurred in connection therewith. Nothing contained in Section 8(a) or this Section 8(b) shall limit any obligations of the Company under any provision of the 2026 Securities Purchase Agreement or Registration Rights Agreement.

9. Voting Rights. Each Holder of outstanding Preferred Shares will have the voting rights as described in this Section 9, subject to the restrictions provided in this Certificate of Designation. At all times, the Holders of the Preferred Shares shall be entitled to notice of any shareholders' meeting and to vote together with the class of shareholders of Common Stock (and with the holders of shares of Series A Convertible Preferred Stock, on an as-converted-to-Common Stock basis, subject to any beneficial ownership limitation applicable thereto), as a single class, as of each record date established by the Board of Directors of the Company (each, a "**Record Date**"), except as provided by law, or by written consent in lieu thereof ("**Written Consent**").

(a) Notwithstanding the conversion provisions set forth in Section 3 above, for so long as any Preferred Shares remain issued and outstanding, and subject to the Maximum Percentage limitation defined above, the holders of Series B Convertible Preferred Stock shall have the right to vote together with the shares of Common Stock in an amount equal to the voting power of the aggregate number of shares of Common Stock that would be issuable to such holder upon conversion of such Series B Convertible Preferred Stock as if the Conversion Price of such Preferred Share was $16.54 (the "**Series B Voting Conversion Price**") such that each Preferred Share shall be entitled to vote, with the aggregate voting power of a Holder's Preferred Shares limited by the Maximum Percentage.

(b) Notwithstanding the provisions set forth in Section 3, Section 4 and Section 6 above, if the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Series B Voting Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time on or after the Subscription Date combines (by any stock split, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Series B Voting Conversion Price in effect immediately prior to such combination will be proportionately increased in accordance with Section 6 above.

(c) To the extent that under the NRS the vote of the holders of the Preferred Shares, voting separately as a class or series, as applicable, is required to authorize a given action of the Company, the affirmative vote or consent of the Series B Required Holders (as defined in the 2026 Securities Purchase Agreement), voting together in the aggregate with the holders of shares of Series A Convertible Preferred Stock and not by separate series unless required under the NRS, represented at a duly held meeting at which a quorum is presented or by written consent of the Series B Required Holders of both such series (except as otherwise may be required under the NRS), voting together in the aggregate and not by separate series unless required under the NRS, shall constitute the approval of such action by both the class or the series, as applicable.

10. Liquidation, Dissolution, Winding-Up. In the event of a Liquidation Event, the Holders shall be entitled to receive in cash out of the assets of the Company, whether from capital or from earnings available for distribution to its shareholders (the "**Liquidation Funds**"), the amount per share such Holder would receive if such Holder converted its Preferred Shares into Common Stock immediately prior to the date of such payment (without regard to any limitation on conversion set forth herein). Upon payment of such amount in full on the outstanding Series B Convertible Preferred Stock, Holders of Series B Convertible Preferred Stock will have no rights to the Company's remaining assets or funds, if any.

11. Distribution of Assets. In addition to any adjustments pursuant to Section 5 and Section 6, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of shares of Common Stock, by way of return of capital or otherwise (including without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (other than a stock dividend to which Section 6 applies) (the "**Distributions**"), then each Holder, as holders of Preferred Shares, will be entitled to such Distributions as if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares and assuming for such purpose that the Preferred Share was converted at the Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that such Holder's right to participate in any such Distribution would result in such Holder and its Attribution Parties exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Distribution to such extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to such extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of such Holder until such time or times as its right thereto would not result in such Holder and its Attribution Parties exceeding the Maximum Percentage, at which time or times, if any, such Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

12. Vote to Change the Terms of or Issue Preferred Shares. In addition to any other rights provided by law, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Articles of Incorporation, without first obtaining the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Series B Required Holders, voting together as a single class, the Company shall not: (a) amend, modify or repeal any provision of, or add any provision to, the Articles of Incorporation or Bylaws, or file any certificate of designation or certificate of amendment to any certificate of designation relating to any series of shares of preferred stock, if such action would adversely alter or change in any respect the preferences, rights, privileges or powers, or restrictions provided for the benefit of the Preferred Shares hereunder, regardless of whether any such action shall be by means of amendment to the Articles of Incorporation or by merger, consolidation or otherwise; (b) increase or decrease (other than by conversion) the authorized number of Preferred Shares; (c) issue any Preferred Shares other than as contemplated hereby or pursuant to the 2026 Securities Purchase Agreement; or (d) without limiting any provision of Section 7, whether or not prohibited by the terms of the Preferred Shares, circumvent a right of the Preferred Shares hereunder.

13. Tax Treatment. Notwithstanding anything to the contrary in this Certificate of Designation, for U.S. federal and other applicable state and local income tax purposes, it is intended that the Preferred Shares will not be treated as "preferred stock" within the meaning of Section 305 of the Code and Treasury Regulations promulgated thereunder. The Company will, and will cause its Subsidiaries and agents to, report consistently with, and take no position or actions inconsistent with, the foregoing treatment, unless required by a determination within the meaning of Section 1313(a) of the Code.

14. Transfer of Preferred Shares. A Holder may transfer some or all of its Preferred Shares without the consent of the Company except as may otherwise be required by Section 2(i) of the 2026 Securities Purchase Agreement.

15. Tax Withholding. The Company agrees that, *provided* that each Holder delivers to the Company a properly executed IRS Form W-9 or other certification satisfactory to the Company certifying as to such Holder's status (or the status of such Holder's beneficial owner(s)) as a United States person (within the meaning of Section 7701(a)(30) of the Code) and such Holder's (or such beneficial owners') eligibility for complete exemption from backup withholding ("**U.S. Person Certification**"), under current law the Company (including any paying agent of the Company) shall not be required to, and shall not, withhold on any payments or deemed payments to any such Holder. In the event that any Holder fails to deliver to the Company such properly executed U.S. Person Certification, the Company reasonably believes that a previously delivered U.S. Person Certification is no longer accurate and/or valid, or there is a change in law that affects the withholding obligations of the Company, the Company and its paying agent shall be entitled to withhold taxes on all payments made to the relevant Holder in the form of cash or otherwise treated, in the Company's reasonable discretion, as a dividend for U.S. federal tax purposes or to request that the relevant Holder promptly pay the Company in cash any amounts required to satisfy any withholding tax obligations, in each case, to the extent the Company or its paying agent determines in good faith it is required to deduct and withhold tax on payments to the relevant Holder under applicable law; *provided*, that the Company shall use commercially reasonable efforts to notify the relevant Holder of any required withholding tax reasonably in advance of the date of the relevant payment. In the event that the Company does not have sufficient cash with respect to any Holder from withholding on cash payments otherwise payable to such Holder and cash paid to the Company by such Holder to the Company pursuant to the immediately preceding sentence, the Company and its paying agent shall be entitled to withhold taxes on deemed payments, including distributions of additional Preferred Stock in lieu of cash and constructive distributions on the Preferred Stock to the extent required by law, and the Company and its paying agent shall be entitled to satisfy any required withholding tax on non-cash payments (including deemed payments) through a sale of a portion of the Preferred Stock received as a dividend or from cash dividends or sales proceeds subsequently paid or credited on the Preferred Stock.

16. Reissuance of Preferred Share Certificates and Book Entries.

(a) Transfer. If any Preferred Shares are to be transferred, the applicable Holder shall surrender the applicable Preferred Share Certificate to the Company (or, if the Preferred Shares are held in Book-Entry form, a written instruction letter to the Company), whereupon the Company will forthwith issue and deliver upon the order of such Holder a new Preferred Share Certificate (in accordance with Section 16(c)) (or evidence of the transfer of such Book-Entry), registered as such Holder may request, representing the outstanding number of Preferred Shares being transferred by such Holder and, if less than the entire outstanding number of Preferred Shares is being transferred, a new Preferred Share Certificate (in accordance with Section 16(c)) to such Holder representing the outstanding number of Preferred Shares not being transferred (or evidence of such remaining Preferred Shares in a Book-Entry for such Holder). Such Holder and any assignee, by acceptance of the Preferred Share Certificate or evidence of Book-Entry issuance, as applicable, acknowledge and agree that, by reason of the provisions of Section 3(c)(i) following conversion or redemption of any of the Preferred Shares, the outstanding number of Preferred Shares represented by the Preferred Shares may be less than the number of Preferred Shares stated on the face of the Preferred Shares.

(b) Lost, Stolen or Mutilated Preferred Share Certificate. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of a Preferred Share Certificate (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the applicable Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of such Preferred Share Certificate, the Company shall execute and deliver to such Holder a new Preferred Share Certificate (in accordance with Section 16(c)) representing the applicable outstanding number of Preferred Shares.

(c) Preferred Share Certificate and Book-Entries Exchangeable for Different Denominations and Forms. Each Preferred Share Certificate is exchangeable, upon the surrender hereof by the applicable Holder at the principal office of the Company, for a new Preferred Share Certificate or Preferred Share Certificate(s) or new Book-Entry (in accordance with this Section 16(c)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Preferred Share Certificate, and each such new Preferred Share Certificate and/or new Book-Entry, as applicable, will represent such portion of such outstanding number of Preferred Shares from the original Preferred Share Certificate as is designated in writing by such Holder at the time of such surrender. Each Book-Entry may be exchanged into one or more new Preferred Share Certificates or split by the applicable Holder by delivery of a written notice to the Company into two or more new Book-Entries (in accordance with this Section 16(c)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Book-Entry, and each such new Book-Entry and/or new Preferred Share Certificate, as applicable, will represent such portion of such outstanding number of Preferred Shares from the original Book-Entry as is designated in writing by such Holder at the time of such surrender.

(d) Issuance of New Preferred Share Certificate or Book-Entry. Whenever the Company is required to issue a new Preferred Share Certificate or a new Book-Entry pursuant to the terms of this Certificate of Designation, such new Preferred Share Certificate or new Book-Entry (i) shall represent, as indicated on the face of such Preferred Share Certificate or in such Book-Entry, as applicable, the number of Preferred Shares remaining outstanding (or in the case of a new Preferred Share Certificate or new Book-Entry being issued pursuant to Section 16(a) or Section 16(b), the number of Preferred Shares designated by such Holder) which, when added to the number of Preferred Shares represented by the other new Preferred Share Certificates or other new Book-Entry, as applicable, issued in connection with such issuance, does not exceed the number of Preferred Shares remaining outstanding under the original Preferred Share Certificate or original Book-Entry, as applicable, immediately prior to such issuance of new Preferred Share Certificate or new Book-Entry, as applicable, and (ii) shall have an issuance date, as indicated on the face of such new Preferred Share Certificate or in such new Book-Entry, as applicable, which is the same as the issuance date of the original Preferred Share Certificate or in such original Book-Entry, as applicable.

17. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation and any of the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit any Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Certificate of Designation. No failure on the part of a Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by such Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of a Holder at law or equity or under this Certificate of Designation or any of the other Transaction Documents shall not be deemed to be an election of such Holder's rights or remedies under such documents or at law or equity. The Company covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by a Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). In addition, the exercise of any right or remedy of any Holder at law or equity or under Preferred Shares or any of the documents shall not be deemed to be an election of such Holder's rights or remedies under such documents or at law or equity. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, each Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to a Holder that is requested by such Holder to enable such Holder to confirm the Company's compliance with the terms and conditions of this Certificate of Designation.

18. Payment of Collection, Enforcement and Other Costs. If (a) any Preferred Shares are placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or a Holder otherwise takes action to collect amounts due under this Certificate of Designation with respect to the Preferred Shares or to enforce the provisions of this Certificate of Designation (with respect to any proceeding in any court or other similar authority, solely to the extent such Holder is the prevailing party in such matter) or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Certificate of Designation, then the Company shall pay the reasonable and documented costs incurred by such Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable and documented attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Certificate of Designation with respect to any Preferred Shares shall be affected, or limited, by the fact that the purchase price paid for each Preferred Share was less than the original Stated Value thereof.

19. Construction; Headings. This Certificate of Designation shall be deemed to be jointly drafted by the Company and the Holders and shall not be construed against any such Person as the drafter hereof. The headings of this Certificate of Designation are for convenience of reference and shall not form part of, or affect the interpretation of, this Certificate of Designation. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Certificate of Designation instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Certificate of Designation. Terms used in this Certificate of Designation and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Issuance Date in such other Transaction Documents unless otherwise consented to in writing by the Series B Required Holders.

20. Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. Notwithstanding the foregoing, nothing contained in this Section 20 shall permit any waiver of any provision of Section 3(d).

21. Dispute Resolution.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Conversion Price or VWAP or a fair market value or the arithmetic calculation of a Conversion Rate, or the applicable redemption price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the applicable Holder (as the case may be) shall submit the dispute to the other party via electronic mail (A) if by the Company, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by such Holder at any time after such Holder learned of the circumstances giving rise to such dispute. If such Holder and the Company are unable to promptly resolve such dispute relating to such Conversion Price, such VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate or such applicable redemption price (as the case may be), at any time after the second (2^{nd}) Business Day following such initial notice by the Company or such Holder (as the case may be) of such dispute to the Company or such Holder (as the case may be), then such Holder may, with the consent of the Company (not to be unreasonably withheld, conditioned or delayed), select an independent, reputable investment bank to resolve such dispute.

(ii) Such Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 21 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such Holder selected such investment bank (the "**Dispute Submission Deadline**") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the "**Required Dispute Documentation**") (it being understood and agreed that if either such Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and such Holder or otherwise requested by such investment bank, neither the Company nor such Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and such Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and such Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 21 constitutes an agreement to arbitrate between the Company and each Holder (and constitutes an arbitration agreement) under NRS Chapter 38 (or such applicable successor rule or regulation of Nevada) (ii) the terms of this Certificate of Designation and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Certificate of Designation and any other applicable Transaction Documents, (iii) the applicable Holder (and only such Holder with respect to disputes solely relating to such Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 21 to any state or federal court sitting in Washoe County, Nevada, in lieu of utilizing the procedures set forth in this Section 21 and (iv) nothing in this Section 21 shall limit such Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 21).

22. Notices; Currency; Payments.

(a) Notices. The Company shall provide each Holder of Preferred Shares with prompt written notice of all actions taken pursuant to the terms of this Certificate of Designation, including in reasonable detail a description of such action and the reason therefor. Whenever notice is required to be given under this Certificate of Designation, unless otherwise provided herein, such notice must be in writing and shall be given in accordance with Section 9(f) of the 2026 Securities Purchase Agreement. Without limiting the generality of the foregoing, the Company shall give written notice to each Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, or (B) for determining rights to vote with respect to any Fundamental Transaction, dissolution, liquidation, or amendment to this Certificate of Designation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

(b) Currency. All dollar amounts referred to in this Certificate of Designation are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Certificate of Designation shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Certificate of Designation, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Certificate of Designation, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by wire transfer of immediately available funds pursuant to wire transfer instructions that Holder shall provide to the Company in writing from time to time. Whenever any amount expressed to be due by the terms of this Certificate of Designation is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

23. Waiver of Notice. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Certificate of Designation and the 2026 Securities Purchase Agreement.

24. Governing Law. This Certificate of Designation shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Certificate of Designation shall be governed by, the internal laws of the State of Nevada, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Nevada or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Nevada. Except as otherwise required by Section 21 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Washoe County, Nevada, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of such Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 21 above. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS CERTIFICATE OF DESIGNATION OR ANY TRANSACTION CONTEMPLATED HEREBY.**

25. Judgment Currency.

(a) If for the purpose of obtaining or enforcing judgment against the Company in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 25 referred to as the "**Judgment Currency**") an amount due in U.S. dollars under this Certificate of Designation, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(ii) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 25(a)(ii) being hereinafter referred to as the "**Judgment Conversion Date**").

(b) If in the case of any proceeding in the court of any jurisdiction referred to in Section 25(a)(i) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(c) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Certificate of Designation.

26. Severability. If any provision of this Certificate of Designation is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Certificate of Designation so long as this Certificate of Designation as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

27. Maximum Payments. Without limitation Section 9(d) of the 2026 Securities Purchase Agreement, nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the applicable Holder and thus refunded to the Company.

28. Shareholder Matters; Amendment.

(a) Shareholder Matters. Any shareholder action, approval or consent required, desired or otherwise sought by the Company pursuant to the NRS, the Articles of Incorporation, this Certificate of Designation or otherwise with respect to the issuance of Preferred Shares may be effected by written consent of the Company's shareholders or at a duly called meeting of the Company's shareholders, all in accordance with the applicable rules and regulations of the NRS. This provision is intended to comply with the applicable sections of the NRS permitting shareholder action, approval and consent affected by written consent in lieu of a meeting.

(b) Amendment. Except for Section 3(d) and this Section 28(b), which may not be amended, modified or waived hereunder, this Certificate of Designation or any provision hereof may be amended, modified or waived by obtaining the affirmative vote at a meeting duly called for such purpose, or written consent without a meeting in accordance with the NRS, of the Series B Required Holders, voting separately as a single class, and with such other shareholder approval, if any, as may then be required pursuant to the NRS and the Articles of Incorporation.

29. Certain Defined Terms. For purposes of this Certificate of Designation, the following terms shall have the following meanings:

(a) [Intentionally Omitted].

(b) "**1934 Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(c) "**Additional Amount**" means, as of the applicable date of determination, with respect to each Preferred Share, all declared and unpaid Dividends and, if applicable with respect to any given Preferred Share, any unpaid amounts that have accrued pursuant to Section 3(c)(ii) hereof or pursuant to Section 5(e) of the Securities Purchase Agreement with respect thereto.

(d) "**Affiliate**" or "**Affiliated**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(e) "**Attribution Parties**" means, with respect to any Holder, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Initial Issuance Date, directly or indirectly managed or advised by such Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of such Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with such Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with such Holder's and its Attribution Parties for purposes of Section 13(d) of the 1934 Act, including shares held by any "group" of which the Holder is a member. For clarity, the purpose of the foregoing is to subject collectively such Holder and its Attribution Parties to the Maximum Percentage.

(f) "**Bloomberg**" means Bloomberg, L.P.

(g) "**Book-Entry**" means each entry on the Register evidencing one or more Preferred Shares held by a Holder in lieu of a Preferred Share Certificate issuable hereunder.

(h) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any Governmental Authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

(i) [Intentionally Omitted]

(j) [Intentionally Omitted]

(k) "**Code**" means the Internal Revenue Code of 1986, as amended.

(l) "**Common Stock**" means (i) the Company's shares of common stock, $0.0001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(m) "**Convertible Securities**" means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(n) "**Eligible Market**" means the New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, or the Nasdaq Capital Market.

(o) "**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire in any transaction or series of related transactions, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Certificate of Designation calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(p) [Intentionally Omitted].

(q) "**Governmental Authority**" means any federal, foreign, state, county, municipal, provincial, or local governmental authority, court, judicial body, arbitration tribunal, government or self-regulatory organization, commission, tribunal or organization, or any regulatory, administrative, or other agency, or any political or other subdivision, department, commission, board, bureau, branch, division, ministry, or instrumentality of any of the foregoing.

(r) "**Group**" means a "group" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(s) "**Liquidation Event**" means, whether in a single transaction or series of transactions, the voluntary or involuntary liquidation, dissolution or winding up of the Company or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Company and its Subsidiaries, taken as a whole.

(t) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(u) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(v) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(w) "**Principal Market**" means the NYSE American.

(x) "**Registration Rights Agreement**" means that certain registration rights agreement, dated as of October 30, 2026, by and among the Company and the initial holders of the Series B Convertible Preferred Stock, as may be amended from time to time, relating to, among other things, the registration of the resale of the Common Stock issuable upon conversion of the Series B Convertible Preferred Stock or otherwise pursuant to the terms of this Certificate of Designation.

(y) "**Series B Required Holders**" means Series B Required Holders as defined in the 2026 Securities Purchase Agreement.

(z) "**SEC**" means the United States Securities and Exchange Commission or the successor thereto.

(aa) "**2026 Securities Purchase Agreement**" means that certain securities purchase agreement by and among the Company and the initial holders of Preferred Shares, dated as of October 30, 2026, as may be amended from time in accordance with the terms thereof.

(bb) "**Series A Convertible Preferred Stock**" means the series of preferred stock designated as Series A Convertible Preferred Stock established by the filing with the Nevada Secretary of State of a certificate of designation effective on July 1, 2025.

(cc) "**Stated Value**" shall mean $1,000 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, subdivisions or other similar events occurring after the Initial Issuance Date with respect to the Preferred Shares.

(dd) "**Subscription Date**" means October 30, 2026.

(ee) **"Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(ff) "**Subsidiaries**" shall have the meaning as set forth in the 2026 Securities Purchase Agreement

(gg) "**Successor Entity**" means the Person (or, if so elected by the Series B Required Holders, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Series B Required Holders, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(hh) "**Trading Day**" means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the applicable Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(ii) "**Transaction Documents**" means the 2026 Securities Purchase Agreement, the Registration Rights Agreement, this Certificate of Designation and each of the other agreements and instruments entered into or delivered by the Company or any of the Holders in connection with the transactions contemplated by the 2026 Securities Purchase Agreement, all as may be amended from time to time in accordance with the terms thereof.

(jj) "**VWAP**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded), during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg through its "VAP" function (set to 09:30 start time and 16:00 end time) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Series B Required Holders. If the Company and the Series B Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 21. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

29. Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Certificate of Designation, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York city time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from such Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from such Holder), such Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this Section 29 shall limit any obligations of the Company, or any rights of any Holder, under Section 4(i) of the 2026 Securities Purchase Agreement.

30. Absence of Trading and Disclosure Restrictions. The Company acknowledges and agrees that no Holder is a fiduciary or agent of the Company and that each Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of such Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that each Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

[The remainder of the page is intentionally left blank]

EXHIBIT I

PELTHOS THERAPEUTICS INC.
CONVERSION NOTICE

Reference is made to the Certificate of Designation of the Articles of Incorporation of Pelthos Therapeutics Inc., a Nevada corporation (the "**Company**") establishing the terms, preferences and rights of the Series B Convertible Preferred Stock, $0.0001 par value (the "**Preferred Shares**") of the Company (the "**Certificate of Designation**"). In accordance with and pursuant to the Certificate of Designation, the undersigned hereby elects to convert the number of Preferred Shares indicated below into shares of common stock, $0.0001 par value per share, of the Company (the "**Common Stock**"), as of the date specified below.

Date of Conversion: _____

Aggregate number of shares of Series B Convertible Preferred Stock to be converted: _____

Aggregate Stated Value of such shares of Series B Convertible Preferred Stock to be converted: _____

Aggregate accrued and unpaid Dividends with respect to such shares of Series B Convertible Preferred Stock to be converted: _____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Notwithstanding anything to the contrary contained herein, this Conversion Notice shall constitute a representation by the Holder of the Preferred Shares submitting this Conversion Notice that after giving effect to the conversion provided for in this Conversion Notice, such Holder (together with its affiliates and Attribution Parties) will not have beneficial ownership (together with the beneficial ownership of such Person's affiliates and Attribution Parties) of a number of shares of Common Stock which exceeds the Maximum Percentage (as defined in the Certificate of Designation) of the total outstanding shares of Common Stock of the Company as determined pursuant to the provisions of Section 3(d) of the Certificate of Designation.

Please issue the Common Stock into which the Preferred Shares are being converted to Holder, or for its benefit, as follows:

¨ Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

_____

_____

¨ Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____
DTC Number: _____
Account Number: _____

Date: _____, _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID: _____

E-mail Address:

EXHIBIT II

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Conversion Notice, (b) certifies that the above indicated number of shares of Common Stock [are][are not] eligible to be resold by the applicable Holder either (i) pursuant to Rule 144 (subject to such Holder's [and such Holder's executing broker's, if applicable,] execution and delivery to the Company of a customary 144 representation letter[s]) or (ii) an effective and available registration statement and (c) hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____, 20__ from the Company and acknowledged and agreed to by _____.

PELTHOS THERAPEUTICS INC.

By: _____
Name:
Title:

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF DESIGNATION OF RIGHTS AND PREFERENCES OF SERIES A CONVERTIBLE PREFERRED STOCK OF PELTHOS THERAPEUTICS INC.

WHEREAS, the Certificate of Designation of Rights and Preferences of Series A Convertible Preferred Stock (the "**Certificate of Designation**") of Pelthos Therapeutics Inc., a Nevada corporation (formerly known as Channel Therapeutics Corporation) (the "**Corporation**"), was originally filed with the Nevada Secretary of State on July 1, 2025, and was amended on July 16, 2025, has not been further amended or modified and is in full force and effect as of the date hereof.

WHEREAS, the amendments set forth herein have been approved by the Required Holders in accordance with Section 27(b) of the Certificate of Designation and by the stockholders of the Company as required by Nevada Revised Statutes ("**NRS**") 78.1955.

WHEREAS, pursuant to the authority expressly conferred upon the Board of Directors of the Company (the "**Board**") by the Company's Articles of Incorporation (as amended and/or restated from time to time, the "**Articles of Incorporation**"), and NRS 78.1955, the Board, on October 30, 2026, determined that it is advisable and in the best interests of the Company and its stockholders for the Company to amend the Certificate of Designation as follows:

1. Section 3(c)(ii) of the Certificate of Designation is hereby amended and restated in its entirety to read as follows:

Company's Failure to Timely Convert. If the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, to issue and deliver to such Holder (or its designee) a certificate for the number of Conversion Shares to which such Holder is entitled and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, to credit such Holder's or its designee's balance account with DTC upon receipt of such Holder's broker request through DTC's DRS/DWAC system for such number of Conversion Shares to which such Holder is entitled upon such Holder's conversion of any Conversion Amount (as the case may be) (a "**Conversion Failure**") and, after the occurrence of at least three (3) Conversion Failures then, in addition to all other remedies available to such Holder, the Company shall pay in cash to such Holder on each day after the Share Delivery Deadline that the issuance of such Conversion Shares is not timely effected an amount equal to 0.5% of the product of (A) the sum of the number of Conversion Shares not issued to such Holder on or prior to the Share Delivery Deadline and to which such Holder is entitled, multiplied by (B) the average VWAP of the Common Stock during the period beginning on the applicable Conversion Date and ending on the applicable Share Delivery Deadline, and such Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, all, or any portion, of such Preferred Shares that has not been converted pursuant to such Conversion Notice; provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline either (A) the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, the Company shall fail to issue and deliver to such Holder (or its designee) a certificate and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, the Transfer Agent shall fail to credit the balance account of such Holder or such Holder's designee, as applicable, with DTC upon receipt of such Holder's broker request through DTC's DRS/DWAC system, for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (i) above, and if on or after such Share Delivery Deadline such Holder acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of Conversion Shares issuable upon such conversion that such Holder is entitled to receive from the Company and has not received from the Company in connection with such Conversion Failure (a "**Buy-In**"), then, in addition to all other remedies available to such Holder, the Company shall, in such Holder's discretion as set forth in a written request to the Company (which may be an e-mail), either: (I) within two (2) Business Days after receipt of such Holder's request pay cash to such Holder in an amount equal to such Holder's total purchase price (including brokerage commissions, stock loan costs and other out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of such Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such Conversion Shares) or credit to the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) (and to issue such Conversion Shares) shall terminate and such shares shall be cancelled, provided that, in lieu of paying the Buy-In Price in cash, the Company may, at its option, promptly reissue (if surrendered) the number of Preferred Shares equal to the number of Preferred Shares submitted for conversion (in which case, such Conversion Notice shall be deemed rescinded and the Company's obligation to issue such Conversion Shares shall terminate and be cancelled) and increase the Additional Amount with respect to such Preferred Shares, pro rata per share, by the amount of such applicable Buy-In Payment Amount (as defined below), or (II) within two (2) Business Days after receipt of such Holder's request, promptly honor its obligation to so issue such Conversion Shares on the Company's share register or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC upon receipt of such Holder's broker request through DTC's DRS/DWAC system for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the average VWAP of the Common Stock during the period commencing on the date of the applicable Conversion Notice and ending on the applicable Share Delivery Deadline (each, a "**Buy-In Payment Amount**"), provided, that in lieu of paying the Buy-In Payment Amount in cash, the Company may, at its election, increase the Additional Amount with respect to such Preferred Shares, pro rata per share, by the amount of such applicable Buy-In Payment Amount. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing Conversion Shares (or to electronically deliver such Conversion Shares) upon the conversion of the Preferred Shares as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Conversion Failure, as applicable, this Section 3(c)(ii) shall not apply to a Holder to the extent the Company has already paid such amounts in full to such Holder with respect to such Delivery Failure, pursuant to the analogous sections of the Securities Purchase Agreement , or to the extent the Company has paid cash in lieu of delivering Authorized Failure Shares as set forth in Section 8(b).

2. Section 4(a) of the Certificate of Designation is hereby amended and restated in its entirety to read as follows:

Assumption. Upon the occurrence of any Fundamental Transaction, other than a Fundamental Transaction consummated solely in cash or a strategic acquisition effected through a subsidiary of the Company, the Successor Entity shall succeed to, and (if the successor entity is not the Company) be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designations and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein and therein. In addition to the foregoing, upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to each Holder confirmation that there shall be issued upon conversion of the Preferred Shares at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the conversion of the Preferred Shares prior to such Fundamental Transaction, such securities, cash, assets or other property which each Holder would have been entitled to receive upon the happening of such Fundamental Transaction had all the Preferred Shares held by each Holder been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of the Preferred Shares contained in this Certificate of Designations), as adjusted in accordance with the provisions of this Certificate of Designations; provided that if there is no change to the securities, cash, assets or other property which each Holder would be entitled to receive as a result of such Fundamental Transaction, no such confirmation shall be required. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion or redemption of the Preferred Shares.

3. The definition of "**Additional Amount**" is hereby amended and restated in its entirety to read as follows:

"**Additional Amount**" means , as of the applicable date of determination, with respect to each Preferred Share, all declared and unpaid Dividends and, if applicable with respect to any given Preferred Share, any unpaid amounts that have accrued pursuant to Section 3(c)(ii) hereof or pursuant to Section 5(e) of the Securities Purchase Agreement with respect thereto.

4. The definition of "**Fundamental Transaction**" (which was erroneously mis-numbered within the original Certificate of Designation as clause (a) of Section 28 and appears between clauses (n) and (o) thereof) is hereby re-designated as clause (o) of Section 28, the clauses of Section 28 formerly designated (o) through (hh) is hereby re-designated (p) through (ii), respectively, and such definition is hereby amended and restated in its entirety to read as follows:

"**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) effect any merger or consolidation of the Company with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire in any transaction or series of related transactions, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Certificate of Designations calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

5. All other provisions of the Certificate of Designation shall remain in full force and effect.

[The remainder of the page is intentionally left blank]

Exhibit 4.2

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT (I) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR (II) PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AS EVIDENCED BY AN OPINION OF COUNSEL OF THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (III) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT. THE NUMBER OF SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 4(C) OF THIS WARRANT.

PELTHOS THERAPEUTICS INC.

WARRANT TO PURCHASE COMMON STOCK

Number of Shares: [·]
(subject to adjustment)

Warrant] No. [·] Original Issue Date: [·], 2026

PELTHOS THERAPEUTICS INC., a Nevada corporation (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned or its registered assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company up to a total of [] shares of Common Stock (as defined below) (each such share, a "**Warrant Share**" and all such shares, the "**Warrant Shares**") at an exercise price per share equal to $0.0001 (the "**Exercise Price**"), in each case as adjusted from time to time as provided in Section 9, upon surrender of this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the "**Warrant**") at any time and from time to time on or after [ ][1] (the "**Initial Exercise Date**") and on or prior to 5:00 p.m., New York time, on the tenth anniversary of the Original Issue Date (such date, the "**Termination Date**").

This Warrant is one of a series of similar warrants (together with this Warrant, the "**Warrants**") issued pursuant to that certain Securities Purchase Agreement, dated October 30, 2026, by and among the Company and the buyers identified therein (the "**Securities Purchase Agreement**").

[1] NTD: To be the date that is 180 days after the closing / coincides with lock-up expiration.

1. Definitions. For purposes of this Warrant, the following terms shall have the following meanings:

"**Affiliate**" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediates, controls, is controlled by or is under common control with such Person.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any direct or indirect Affiliates of the Holder, (ii) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the date hereof, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any Attribution Parties and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and/or any other Attribution Parties for purposes of Section 13(d) or Section 16 of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

"**Bloomberg**" means Bloomberg, L.P.

"**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

"**Closing Bid Price**" and "**Closing Sale Price**" means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Trading Market, as reported by Bloomberg, or, if the Principal Trading Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of such security prior to 4:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Trading Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Series B Required Holders. If the Company and the Series B Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 15(n). All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Stock**" means (i) the Company's shares of common stock, $0.0001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

"**Convertible Securities**" means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended, and all of the rules and regulations promulgated thereunder.

"**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of more than either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) more than 50% of the outstanding shares of Common Stock, (y) more than 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) more than 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) more than 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Warrant calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

"**Group**" shall have the meaning ascribed to it in Section 13(d) of the Exchange Act, and all related rules, regulations and jurisprudence.

"**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

"**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on a Trading Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

"**Person**" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, incorporated or unincorporated association, joint venture, government (or an agency or subdivision thereof) or any other entity or organization.

"**Principal Trading Market**" means the national securities exchange or other trading market on which the Common Stock is primarily listed on and quoted for trading, which, as of the Original Issue Date, shall be The NYSE American LLC.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder.

"**Standard Settlement Period**" means the standard settlement period, expressed in a number of Trading Days, for the Principal Trading Market with respect to the Common Stock that is in effect on the date of delivery of an applicable Exercise Notice, which as of the Original Issue Date was "T+1."

"**Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

"**Successor Entity**" means the Person (or, if so elected by the Series B Required Holders (as defined in the Securities Purchase Agreement), the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Series B Required Holders, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

"**Trading Day**" means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Trading Market, or, if the Principal Trading Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price or trading volume determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

"**Trading Market**" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

"**Transfer Agent**" means Nevada Agency Transfer Company, the Company's transfer agent and registrar for the Common Stock, and any successor appointed in such capacity.

"**VWAP**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Trading Market (or, if the Principal Trading Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded), during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg through its "VAP" function (set to 09:30 start time and 16:00 end time) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 15(n). All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

2. Issuance of Securities; Registration of Warrants. The Company shall register ownership of this Warrant, upon records to be maintained by the Company for that purpose (the "**Warrant Register**"), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any assignee to which this Warrant is permissibly assigned hereunder) from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. Registration of Transfers. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or the Transfer Agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Subject to compliance with all applicable securities laws, the Company shall, or will cause its Transfer Agent to, register the transfer of all or any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, and payment for all applicable transfer taxes (if any). Upon any such registration or transfer, a new warrant to purchase Common Stock in substantially the form of this Warrant (any such new warrant, a "**New Warrant**") evidencing the portion of this Warrant so transferred shall be issued to the transferee, and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations in respect of the New Warrant that the Holder has in respect of this Warrant. The Company shall, or will cause its Transfer Agent to, prepare, issue and deliver at the Company's own expense any New Warrant under this Section 3. Until due presentment for registration of transfer, the Company may treat the registered Holder hereof as the owner and holder for all purposes, and the Company shall not be affected by any notice to the contrary.

4. Exercise of Warrants.

(a) All or any part of this Warrant shall be exercisable by the registered Holder in any manner permitted by this Warrant (including Section 11) at any time and from time to time and on or prior to the Termination Date.

(b) The Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached as Schedule 1 hereto (the "**Exercise Notice**"), completed and duly signed, and (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of a "cashless exercise" if so indicated in the Exercise Notice pursuant to Section 10 below), and the date on which the last of such items is delivered to the Company (as determined in accordance with the notice provisions hereof) is an "**Exercise Date**." On the date on which the Company has received an Exercise Notice, the Company shall transmit by electronic mail an acknowledgment of confirmation of receipt of such Exercise Notice, in the form attached hereto as Schedule 2, to the Holder and the Transfer Agent, which confirmation shall constitute an instruction to the Transfer Agent to process such Exercise Notice in accordance with the terms herein. The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares, if any. The delivery by (or on behalf of) the Holder of the Exercise Notice and the applicable Exercise Price as provided above shall constitute the Holder's certification to the Company that, in the case of an exercise for cash, its representations contained in Sections 2(a) through 2(i) of the Securities Purchase Agreement are true and correct as of the Exercise Date as if remade in their entirety (or, in the case of any transferee Holder that is not a party to the Securities Purchase Agreement or, in the case of a cashless exercise, its representations contained in Sections 2(a) and 2(f) through 2(i) of the Securities Purchase Agreement, such transferee Holder's certification to the Company that such representations are true and correct as to such transferee Holder as of the Exercise Date). The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Exercise Notice within two (2) Trading Days of receipt of such notice.

(c) The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this section, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.

5. Delivery of Warrant Shares.

(a) Upon exercise of this Warrant, the Company shall promptly (but in no event later than the number of Trading Days comprising the Standard Settlement Period following the Exercise Date), upon the request of the Holder, cause the Transfer Agent to credit such aggregate number of shares of Common Stock specified by the Holder in the Exercise Notice and to which the Holder is entitled pursuant to such exercise (the "**Exercise Shares**") to (i) the Holder's or its designee's balance account with The Depository Trust Company ("**DTC**") through its Deposit Withdrawal At Custodian system or (ii) in book-entry form via a direct registration system ("**DRS**") maintained by or on behalf of the Transfer Agent, in each case, so long as either (A) there is an effective registration statement registering the issuance of the Warrant Shares to the Holder, (b) the Exercise Shares have been sold pursuant to an effective registration statement registering the resale of such Exercise Shares by the Holder or (C) the Exercise Shares are eligible for resale by the Holder without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144 promulgated under the Securities Act (assuming cashless exercise of this Warrant). If (A), (B) and (C) above are not true, the Company shall cause the Transfer Agent to either (i) record the Exercise Shares in the name of the Holder or its designee on the certificates reflecting the Exercise Shares with an appropriate legend regarding restriction on transferability, which shall be issued and dispatched by overnight courier to the address as specified in the Exercise Notice, and on the Company's share register or (ii) issue such Exercise Shares in the name of the Holder or its designee in restricted book-entry form in the Company's share register. The Holder, or any Person so designated by the Holder to receive Warrant Shares, shall be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date, irrespective of the date such Warrant Shares are credited to the Holder's DTC account, the date of the book entry positions or the date of delivery of the certificates evidencing such Exercise Shares, as the case may be; provided, that the Holder shall be deemed to have waived any voting rights of any such Warrant Shares that may arise with respect to the period commencing on such Exercise Date, through, and including, each calendar day in the Standard Settlement Period, as necessary, such that the aggregate voting rights of any shares of Common Stock (including such Warrant Shares) beneficially owned by the Holder and/or any Attribution Parties, collectively, on any such date of determination shall not exceed the Maximum Percentage (as defined below) as a result of any such exercise of this Warrant.

(b) In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to deliver to the Holder or its designee Exercise Shares in the manner required pursuant to Section 5(a) within the Standard Settlement Period following the Exercise Date (other than a failure caused by incorrect or incomplete information provided by the Holder to the Company) and the Holder or the Holder's broker on its behalf purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "**Buy-In**") but did not receive within the Standard Settlement Period, then the Company shall, within two (2) Business Days after the Holder's request and in the Holder's sole discretion, promptly honor its obligation to deliver to the Holder or its designee the Exercise Shares pursuant to Section 5(a) and pay cash to the Holder in an amount equal to the excess (if any) of Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased in the Buy-In, less the product of (A) the number of shares of Common Stock purchased in the Buy-In, times (B) the Closing Sale Price of a share of Common Stock on the Exercise Date. The Holder shall provide the Company written notice promptly after the occurrence of a Buy-In, indicating the amounts payable to the Holder in respect of the Buy-In together with applicable confirmations and other evidence reasonably requested by the Company.

(c) To the extent permitted by law and subject to Section 5(b), the Company's obligations to issue and deliver Warrant Shares in accordance with and subject to the terms hereof (including the limitations set forth in Section 11 below) are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance that might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares. Subject to Section 5(b), nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Exercise Shares; provided, however, that the Holder shall not be entitled to both (i) require the Company to reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not timely honored and (ii) receive the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 5(a).

6. Charges, Taxes and Expenses. Issuance and delivery of Exercise Shares shall be made without charge to the Holder for any issue or transfer tax, transfer agent fee or other incidental tax or expense (excluding any applicable stamp duties) in respect of the issuance of such shares, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the registration of any Warrant Shares or the Warrants in a name other than that of the Holder or an Affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. **Replacement of Warrant**. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction (in such case) and, in each case, a customary and reasonable contractual indemnity, if requested by the Company. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. **Reservation of Warrant Shares**. The Company covenants that it will, at all times while this Warrant is outstanding, reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares that are initially issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and non-assessable. The Company will take all such action as may be reasonably necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed. The Company further covenants that it will not, without the prior written consent of the Holder, take any actions to increase the par value of the Common Stock at any time while this Warrant is outstanding.

9. **Certain Adjustments**. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant (the "**Number of Warrant Shares**") are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock issued and outstanding on the Original Issue Date and in accordance with the terms of such stock on the Original Issue Date or as amended, that is payable in shares of Common Stock, (ii) subdivides its outstanding shares of Common Stock into a larger number of shares of Common Stock, (iii) combines its outstanding shares of Common Stock into a smaller number of shares of Common Stock or (iv) issues by reclassification of shares of capital stock any additional shares of Common Stock of the Company, then in each such case the Number of Warrant Shares shall be multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately before such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, provided, however, that if such record date shall have been fixed and such dividend is not fully paid on the date fixed therefor, the Number of Warrant Shares shall be recomputed accordingly as of the close of business on such record date and thereafter the Number of Warrant Shares shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends. Any adjustment pursuant to clause (ii), (iii) or (iv) of this paragraph shall become effective immediately after the effective date of such subdivision, combination or issuance.

(b) Pro Rata Distributions. If, on or after the Original Issue Date, the Company shall declare or make any dividend or other pro rata distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property, options, evidence of indebtedness or any other assets by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction, but, for the avoidance of doubt, excluding any distribution of shares of Common Stock subject to Section 9(a), any distribution of Purchase Rights (as defined below) subject to Section 9(c) and any Fundamental Transaction (as defined below) subject to Section 9(d)) (a "**Distribution**") then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage (as defined below)) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution; *provided*, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation.

(c) Purchase Rights. If at any time on or after the Original Issue Date, the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property, in each case pro rata to the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issuance or sale of such Purchase Rights; *provided*, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (and shall not be entitled to beneficial ownership of such Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent) and at the Holder's election, in its sole discretion, either (1) such Purchase Right to such extent shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right to be held similarly in abeyance) to the same extent as if there had been no such limitation or (2) the Company shall offer the Holder the right upon exercise of such Purchase Right to acquire a security (e.g. a pre-funded warrant) that would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage but will otherwise to the extent possible have economic and other rights, preferences and privileges substantially consistent and on par with the securities or other property issuable upon exercise of the originally offered Purchase Rights.

(d) Fundamental Transactions. Upon the occurrence of any Fundamental Transaction, other than a Fundamental Transaction consummated solely in cash or a strategic acquisition effected through a subsidiary of the Company, the Successor Entity shall succeed to, and (if the Successor Entity is not the Company) be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents (as defined in the Securities Purchase Agreement) referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein and therein. In addition to the foregoing, upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 9(b) and (c) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to such Fundamental Transaction, such securities, cash, assets or other property which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Warrant been exercised immediately prior to such Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant; provided that if there is no change to the securities, cash, assets or other property which the Holder would be entitled to receive as a result of such Fundamental Transaction, no such confirmation shall be required. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive cash, securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to ensure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 9(b) and (c) above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Series B Required Holders (as defined in the Securities Purchase Agreement). The provisions of this Section 9(d) shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied as if this Warrant (and any such subsequent warrants) were fully exercisable and without regard to any limitations on the exercise of this Warrant (provided that the Holder shall continue to be entitled to the benefit of the Maximum Percentage, applied however with respect to shares of capital stock registered under the Exchange Act and thereafter receivable upon exercise of this Warrant (or any such other warrant)).

(e) Number of Warrant Shares. Simultaneously with any adjustment to the Number of Warrant Shares pursuant to Section 9, the Exercise Price shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased Number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment. Notwithstanding the foregoing, in no event may the Exercise Price be adjusted below the par value of the Common Stock then in effect.

(f) Calculations. All calculations under this Section 9 shall be made to the nearest one-hundredth of one cent or the nearest one-hundredth of a share, as applicable.

(g) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will, at the written request of the Holder, promptly compute such adjustment, in good faith, in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(h) Notice of Corporate Events. If, while this Warrant is outstanding, the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including, without limitation, any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice of such transaction at least ten (10) days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice. In addition, if while this Warrant is outstanding, the Company authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction contemplated by Section 9(d), other than a Fundamental Transaction under clause (iii) of Section 9(d), the Company shall deliver to the Holder a notice of such Fundamental Transaction at least thirty (30) days prior to the date such Fundamental Transaction is consummated. Holder agrees to maintain any information disclosed pursuant to this Section 9(h) in confidence until such information is publicly available, and shall comply with applicable law with respect to trading in the Company's securities following receipt of any such information.

(i) Voluntary Adjustment By Company. Subject to the rules and regulations of the Principal Trading Market, the Company may at any time during the term of this Warrant, reduce the then-current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

10. Payment of Exercise Price. Notwithstanding anything contained herein to the contrary, the Holder may, in its sole discretion, satisfy its obligation to pay the Exercise Price through a "cashless exercise", in which event the Company shall issue to the Holder the number of Warrant Shares in an exchange of securities effected pursuant to Section 3(a)(9) of the Securities Act, determined as follows:

X = Y [(A-B)/A]

where:

"X" equals the number of Warrant Shares to be issued to the Holder;

"Y" equals the total number of Warrant Shares with respect to which this Warrant is then being exercised;

"A" equals, as elected by the Holder: (i) the VWAP of the shares of Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 4(b) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 4(b) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Exercise Notice or (z) the bid price of the shares of Common Stock on the Principal Trading Market as reported by Bloomberg as of the time of the Holder's execution of the applicable Exercise Notice if such Exercise Notice is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter pursuant to Section 4(b) hereof, or (iii) the Closing Sale Price of the Common Stock on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 4(b) hereof after the close of "regular trading hours" on such Trading Day; and

"B" equals the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a "cashless exercise" transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the Original Issue Date (provided that the Commission continues to take the position that such treatment is proper at the time of such exercise). In the event that a registration statement registering the issuance of Warrant Shares is, for any reason, not effective at the time of exercise of this Warrant, then this Warrant may only be exercised through a cashless exercise, as set forth in this Section 10. If the Warrant Shares are issued in such a cashless exercise, the Company acknowledges and agrees that, in accordance with Section 3(a)(9) of the Securities Act, the Exercise Shares issued in such exercise shall take on the registered characteristics of the Warrants being exercised and may be tacked on to the holding period of the Warrants being exercised. Except as set forth in Section 5(b) (Buy-in Remedy) and Section 12 (No Fractional Shares), in no event will the exercise of this Warrant be settled in cash. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the number of Warrant Shares to be issued pursuant to the terms hereof, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 15(n).

11. Limitations on Exercise.

(a) Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any portion of this Warrant, and the Holder of this Warrant shall not have the right to exercise any portion of the Warrant, and any such exercise shall be null and void ab initio and treated as if the exercise had not been made, to the extent that immediately prior to or following such exercise, the Holder, together with the Attribution Parties, beneficially owns or would beneficially own as determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder, in excess of [ ][2]% (the "**Maximum Percentage**") of the Common Stock that would be issued and outstanding following such exercise. For purposes of calculating beneficial ownership for determining whether the Maximum Percentage is or will be exceeded, the aggregate number of shares of Common Stock held and/or beneficially owned by the Holder together with the Attribution Parties, shall include the number of shares of Common Stock held and/or beneficially owned by the Holder together with the Attribution Parties plus the number of shares of Common Stock issuable upon exercise of the relevant Warrant with respect to which the determination is being made but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, unexercised Warrant held and/or beneficially owned by the Holder or the Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company held and/or beneficially owned by such Holder or any Attribution Party (including, without limitation, any convertible notes, convertible stock or warrants) that are subject to a limitation on conversion or exercise analogous to the limitation contained herein. For purposes of this Section 11(a), beneficial ownership of the Holder or the Attribution Parties shall, except as set forth in the immediately preceding sentence, be calculated and determined in accordance with Section 13(d) of the Exchange Act and the rules promulgated thereunder. For purposes of this Warrant, in determining the number of outstanding shares of Common Stock, a Holder of this Warrant may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent Form 10-K, Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding (such issued and outstanding shares, the "**Reported Outstanding Share Number**"). For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. The Holder shall disclose to the Company the number of shares of Common Stock that it, together with the Attribution Parties holds and/or beneficially owns and has the right to acquire through the exercise of derivative securities and any limitations on exercise or conversion analogous to the limitation contained herein contemporaneously or immediately prior to submitting an Exercise Notice for the relevant Warrant. If the Company receives an Exercise Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Exercise Notice would otherwise cause the Holder's, together with the Attribution Parties', beneficial ownership, as determined pursuant to this Section 11(a), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of Warrant Shares to be purchased pursuant to such Exercise Notice (the number of shares by which such purchase is reduced, the "**Reduction Shares**") and (ii) as soon as reasonably practicable, the Company shall return to the Holder any exercise price paid by the Holder for the Reduction Shares. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder and the Attribution Parties since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of Common Stock to the Holder upon exercise of this Warrant results in the Holder, together with the Attribution Parties, being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's, together with the Attribution Parties', aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder and/or the Attribution Parties shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the exercise price paid by the Holder for the Excess Shares. By written notice to the Company, a Holder of this Warrant may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company, (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Warrants that is not an Attribution Party of the Holder and (iii) any such increase or decrease shall not negatively affect any partial exercise effected prior to such change.

[2] Insert blocker elected by holder for CoD

(b) This Section 11 shall not restrict the number of shares of Common Stock which a Holder or the Attribution Parties may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder or the Attribution Parties may receive in the event of a Fundamental Transaction as contemplated in Section 9(d) of this Warrant. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder or the Attribution Parties for any purpose including for purposes of Section 13(d) of the Exchange Act and the rules promulgated thereunder or Section 16 of the Exchange Act and the rules promulgated thereunder, including Rule 16a-1(a)(1). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 11 to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 11 or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Warrant.

12. **No Fractional Shares**. No fractional Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares that would otherwise be issuable, the number of Warrant Shares to be issued shall be rounded up to the next whole number.

13. **Notices**. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via confirmed e-mail at the e-mail address specified in the books and records of the Transfer Agent prior to 5:30 p.m., New York City time, on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via confirmed e-mail at the e-mail address specified in the books and records of the Transfer Agent on a day that is not a Trading Day or later than 5:30 p.m., New York City time, on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service specifying next business day delivery, or (iv) upon actual receipt by the Person to whom such notice is required to be given, if by hand delivery. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant (other than the issuance of shares of Common Stock upon exercise in accordance with the terms hereof), including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon each adjustment of the Exercise Price and the number of Warrant Shares, setting forth in reasonable detail, and certifying, the calculation of such adjustment(s) and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, or (B) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its Subsidiaries (as defined in the Securities Purchase Agreement), the Company shall simultaneously file such notice with the SEC (as defined in the Securities Purchase Agreement) pursuant to a Current Report on Form 8-K. If the Company or any of its Subsidiaries provides material non-public information to the Holder that is not simultaneously filed in a Current Report on Form 8-K and the Holder has not agreed to receive such material non-public information, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality to the Company, any of its Subsidiaries or any of their respective officers, directors, employees, affiliates or agents with respect to, or a duty to any of the foregoing not to trade on the basis of, such material non-public information. It is expressly understood and agreed that the time of execution specified by the Holder in each Exercise Notice shall be definitive and may not be disputed or challenged by the Company.

14. Warrant Agent. The Company shall initially serve as warrant agent under this Warrant. Upon 30 days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

15. Miscellaneous.

(a) No Rights as a Stockholder. Except as otherwise set forth in this Warrant, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose (except as may be required by applicable tax law), nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, amalgamation, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

(b) Further Assurances. Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate or articles of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable Warrant Shares upon the exercise of this Warrant, and (c) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant. Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(c) Successors and Assigns. Subject to compliance with applicable securities laws, this Warrant may be assigned by the Holder. This Warrant may not be assigned by the Company without the written consent of the Holder, except to a successor in the event of a Fundamental Transaction. This Warrant shall be binding on and inure to the benefit of the Company and the Holder and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder, or their successors and assigns.

(d) Amendment and Waiver. Except as otherwise provided herein, the provisions of this Warrant (other than Section 11 and this Section 15(d), which may not be amended, modified or waived) may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

(e) Acceptance. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

(f) Governing Law; Jurisdiction. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTIONS) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTIONS OTHER THAN THE STATE OF NEW YORK. EACH OF THE COMPANY AND THE HOLDER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT. EACH OF THE COMPANY AND THE HOLDER HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PERSON AT THE ADDRESS IN EFFECT FOR NOTICES TO IT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. EACH OF THE COMPANY AND THE HOLDER HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

(g) Headings. The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(h) Severability. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(i) Payment of Collection, Enforcement and Other Costs. If (a) this Warrant is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Warrant or to enforce the provisions of this Warrant (with respect to any proceeding in any court or other similar authority, solely to the extent the Holder is the prevailing party in such matter) or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Warrant, then the Company shall pay the reasonable and documented costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, reasonable and documented attorneys' fees and disbursements.

(j) Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its Articles of Incorporation (as defined in the Securities Purchase Agreement), Bylaws (as defined in the Securities Purchase Agreement) or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issuance or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant. Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the date hereof, the Holder is not permitted to exercise this Warrant in full for any reason (other than pursuant to restrictions set forth in Section 11 hereof), the Company shall use its best efforts to promptly remedy such failure, including, without limitation, obtaining such consents or approvals as necessary to permit such exercise into shares of Common Stock.

(k) Disclosure. Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Warrant, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York city time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this Section 15(k) shall limit any obligations of the Company, or any rights of the Holder, under Section 4(i) of the Securities Purchase Agreement.

(l) Absence of Trading and Disclosure Restrictions. The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company and that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

(m) Remedies, Characterization, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Warrant. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, exercises and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant.

(n) Submission to Dispute Resolution.

(i) In the case of a dispute relating to the Exercise Price, the Closing Sale Price, the Closing Bid Price, the VWAP or fair market value or the arithmetic calculation of the number of Warrant Shares (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via electronic mail (A) if by the Company, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder, at any time after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Exercise Price, such Closing Sale Price, such Closing Bid Price, such VWAP or such fair market value or such arithmetic calculation of the number of Warrant Shares (as the case may be), at any time after the second (2^{nd}) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, with the consent of the Company (not to be unreasonably withheld, conditioned or delayed), select an independent, reputable investment bank to resolve such dispute.

(ii) The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 15(n) and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5^{th}) Business Day immediately following the date on which the Holder selected such investment bank (the "**Dispute Submission Deadline**") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the "**Required Dispute Documentation**") (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(iv) The Company expressly acknowledges and agrees that (i) this Section 15(n) constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under the rules then in effect under § 7501, et seq. of the New York Civil Practice Law and Rules ("**CPLR**") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 15(n), (ii) the terms of this Warrant and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Warrant and any other applicable Transaction Documents, (iii) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 15(n) to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 15(n) and (iv) nothing in this Section 15(n) shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 15(n)).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

PELTHOS THERAPEUTICS INC.

By: _____
Name:
Title:

SCHEDULE 1

FORM OF EXERCISE NOTICE

[To be executed by the Holder to purchase shares of Common Stock under the Warrant]

PELTHOS THERAPEUTICS INC.

The undersigned holder hereby elects to exercise the Warrant to Purchase Common Stock No. _____ (the "**Warrant**") of Pelthos Therapeutics Inc., a Nevada corporation (the "**Company**") as specified below. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the aggregate Exercise Price with respect to this exercise shall be made as:

¨ a "Cash Exercise" with respect to _____ Warrant Shares; and/or

¨ a "Cashless Exercise" with respect to _____ Warrant Shares.

In the event that the Holder has elected a Cashless Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder hereby represents and warrants that (i) this Exercise Notice was executed by the Holder at _____ [a.m.][p.m.] on the date set forth below and (ii) if applicable, the bid price as of such time of execution of this Exercise Notice was $_____.

2. Payment of Exercise Price. In the event that the Holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder shall pay the aggregate Exercise Price in the sum of $_____ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to Holder, or its designee or agent as specified below, _____ shares of Common Stock in accordance with the terms of the Warrant. Delivery shall be made to Holder, or for its benefit, as follows:

¨ Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

_____

_____

¨ Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____
DTC Number: _____
Account Number: _____

Date: _____,

_____

Name of Registered Holder

By: _____

Name:
Title:

Tax ID: _____

E-mail Address: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

SCHEDULE 2

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Exercise Notice, (b) certifies that the above indicated number of shares of Common Stock [are][are not] eligible to be resold by the applicable Holder either (i) pursuant to Rule 144 (subject to such Holder's [and such Holder's executing broker's, if applicable,] execution and delivery to the Company of a customary 144 representation letter[s]) or (ii) an effective and available registration statement and (c) hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____, 202_, from the Company and acknowledged and agreed to by _____.

PELTHOS THERAPEUTICS INC.

By: _____

Name:

Title:

Exhibit 10.1

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of October 30, 2026, is by and among Pelthos Therapeutics Inc., a Nevada corporation, with offices located at 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703 (the "**Company**"), each of the investors listed on the Schedule of Buyers attached hereto (individually, a "**Buyer**" and collectively, the "**Buyers**"), and each other person identified on the Schedule of Buyers attached hereto.

RECITALS

A. Prior to the date hereof Merger Partner (as defined below) has issued and sold bridge notes pursuant to Convertible Note Purchase Agreements dated as of October 30, 2026, in an aggregate amount of $7,000,000 to certain of the Buyers (the "**Bridge Buyers**"), and may issue and sell additional bridge notes to Other Bridge Buyers as set forth herein, up to a maximum aggregate amount from the Bridge Buyers and Other Bridge Buyers of $8,500,000 (the "**Bridge Notes**") only to the extent required pursuant to the Second Amended and Restated Investors Rights' Agreement, dated as of April 19, 2022 (the "**Investors Rights Agreement**"), by and among Merger Partner (as defined below) and the investors party thereto, which Bridge Notes shall become due and payable at the time of Closing (as defined below).

B. Concurrently with the execution of this Agreement, the Company entered into that certain Agreement and Plan of Merger (the "**Merger Agreement**"), with Castle Creek Biosciences, Inc., a Delaware corporation ("**Merger Partner**"), Credit Card Merger Sub Inc., a Delaware corporation and wholly-owned subsidiary of the Company ("**Merger Sub I**"), Credit Card Merger Sub LLC, a Delaware limited liability company and wholly-owned subsidiary of the Company ("**Merger Sub II**"), and Paragon Biosciences, LLC, a Delaware limited liability company, as the securityholder representative (the "**Securityholder Representative**"), pursuant to which, among other things, (i) Merger Sub I shall merge with and into Merger Partner and, at the closing thereof, Merger Partner, as the surviving entity, shall be a wholly-owned subsidiary of the Company (the "**First Merger**") and (ii) immediately following the First Merger, Merger Partner shall merge with and into Merger Sub II and, at the closing thereof, Merger Sub II, as the surviving entity, shall continue as the surviving company and will remain a wholly-owned subsidiary of the Company (the "**Second Merger**," and, together with the First Merger, the "**Mergers**").

C. The Company and each Buyer are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506(b) of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the 1933 Act.

D. On October 29, 2026, the Board of Directors of the Company (the "**Board**") (i) authorized a new series of convertible preferred stock of the Company designated as Series B Convertible Preferred Stock, par value $0.0001 per share, the terms of which are set forth in the certificate of designation establishing such series of preferred stock (the "**Certificate of Designation**"), in the form attached hereto as **Exhibit A** (together with any convertible preferred shares issued in replacement thereof in accordance with the terms thereof, the "**Series B Preferred Stock**"), which Series B Preferred Stock is convertible into shares of Common Stock (as defined below) (such shares of Common Stock issuable pursuant to the terms of the Certificate of Designation, including, without limitation, upon conversion or otherwise, collectively, the "**Conversion Shares**"), in accordance with the terms of the Certificate of Designation and (ii) authorized the issuance of Common Stock purchase warrants to purchase shares of Common Stock (the "**Warrant Shares**"), substantially in the form attached hereto as Exhibit D (the "**Warrants**").

E. Each Buyer, severally and not jointly, wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, the number of shares of Series B Preferred Stock (the "**Preferred Shares**") set forth opposite such Buyer's name in column (3) on the Schedule of Buyers and Warrants to purchase such number of shares of Common Stock set forth opposite such Buyer's name in column (4) on the Schedule of Buyers. The investor listed as the Option Buyer on the Schedule of Buyers attached hereto (the "**Option Buyer**") may purchase up to the aggregate number of Preferred Shares set forth opposite the Option Buyer's name in column (3) on the Schedule of Buyers and Warrants to purchase such number of shares of Common Stock set forth opposite the Option Buyer's name in column (4) on the Schedule of Buyers.

F. On the date hereof, (i) Ligand Pharmaceuticals Incorporated ("**Ligand**") shall have delivered to the Company a lock-up agreement in the form of **Exhibit B-1** attached hereto (the "**Ligand Lock-Up Agreement**"), duly executed and delivered by Ligand and the Company; and (ii) each of Nomis Bay Ltd ("**Nomis Bay**"), Nomis Bay Opportunity Ltd, BPY Limited, Boothbay Absolute Return Strategies LP, Marshman Fund Trust II U/A/D 5/1/08 ("**Marshman**") and Valor R&D Series LLC, Series JO, shall have delivered to the Company a lock-up agreement in the form of **Exhibit B-2** attached hereto (together with the Ligand Lock-Up Agreement, the "**Lock-Up Agreements**" and each, a "**Lock-Up Agreement**"), duly executed and delivered by the parties thereto (together with Ligand, the "**Lock-Up Parties**"), pursuant to which the Lock-Up Parties, severally, shall have agreed not to directly, or indirectly, sell any securities of the Company except in compliance therewith.

G. On the Closing Date (as defined below), the parties hereto shall execute and deliver a Registration Rights Agreement, in the form attached hereto as **Exhibit C** (the "**Registration Rights Agreement**"), pursuant to which the Company has agreed to provide certain registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement), under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

H. The Preferred Shares, the Conversion Shares, the Warrants and the Warrant Shares are collectively referred to herein as the "**Securities**."

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF PREFERRED SHARES AND WARRANTS.

(a) Purchase of Preferred Shares and Warrants. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company on the Closing Date (as defined below), the aggregate number of Preferred Shares as is set forth opposite such Buyer's name in column (3) on the Schedule of Buyers and the aggregate number of Warrants as is set forth opposite such Buyer's name in column (4) on the Schedule of Buyers.

(b) Other Bridge Buyers. If, prior to November 14, 2026 (the "**Second Signing Date**"), any existing stockholder of Merger Partner ("**Merger Partner Stockholder**") exercises its pre-emptive right to purchase Bridge Notes pursuant to the Investors Rights Agreement, (i) such Merger Partner Stockholder, upon execution and delivery no later than the Second Signing Date of a joinder to this Agreement in the form of Exhibit E hereto (a "**Joinder**") and a Lock-up Agreement, shall be deemed to be a Buyer and an "**Other Bridge Buyer**" for all purposes hereunder, (ii) such Merger Partner Stockholder shall be added to the Schedule of Buyers under the heading "Other Bridge Buyers" with a Purchase Price not exceeding its Pro Rata Amount (as defined in the Investors Rights Agreement); (iii) such Merger Partner Stockholder's investment will be credited against Marshman's commitment to fund the Total Purchase Price in column (8) of the Schedule of Buyers, provided that Marshman's Total Purchase Price shall not be reduced below $10,250,000.00, and (iv) Marshman's commitment to fund the Purchase Price at Closing and the aggregate number of Preferred Shares in column (3) of the Schedule of Buyers and aggregate number of Warrants in column (4) of the Schedule of Buyers to be purchased by Marshman at Closing will be reduced correspondingly.

(c) Option Buyer. If, prior to the Second Signing Date, the Option Buyer listed on the Schedule of Buyers elects to purchase Preferred Shares, (i) such Option Buyer, upon execution and delivery of a Joinder and a Lock-up Agreement no later than the Second Signing Date, shall be deemed to be a Buyer for all purposes hereunder, (ii) such Option Buyer's investment will be credited against Marshman's commitment to fund the Total Purchase Price in column (8) of the Schedule of Buyers, but only to the extent that Marshman's Total Purchase Price in column (8) of the Schedule of Buyers would not be reduced (together with any reductions by virtue of the Other Bridge Buyers' investments pursuant to Section 1(b) above) below $10,250,000.00, (iii) Marshman's aggregate number of Preferred Shares in column (3) of the Schedule of Buyers and aggregate number of Warrants in column (4) of the Schedule of Buyers purchased at Closing will be reduced correspondingly; and (iv) to the extent the Option Buyer's Purchase Price, together with the Other Bridge Buyers' aggregate Purchase Price pursuant to Section 1(b) above, would exceed $4,125,000.00, the Total Purchase Price in column (8) of the Schedule of Buyers will be increased by such excess amount; provided that the Total Purchase Price for all purchases under this Agreement shall not exceed $80.0 million.

(d) Updated Schedule of Buyers. Promptly following the Second Signing Date and the execution and delivery of a Joinder and a Lock-up Agreement by the Other Bridge Buyers and the Option Buyer, the Company shall amend the Schedule of Buyers to reflect the number of Preferred Shares and number of Warrants purchased (solely in the case of the Other Bridge Buyers, the Option Buyer and Marshman), and the Total Purchase Price (as set forth in column (8) of the Schedule of Buyers) and New Cash at Closing (as set forth in column (9) of the Schedule of Buyers) to be paid, in each case, by each applicable Buyer, and shall provide such updated Schedule of Buyers to each Buyer. Upon the execution and delivery of this Agreement and a Lock-up Agreement by the Other Bridge Buyers and the Option Buyer, (i) each such Other Bridge Buyer and the Option Buyer shall be obligated, severally and not jointly, to purchase, and the Company shall be obligated to issue and sell to such Other Bridge Buyer or Option Buyer, as applicable, the Preferred Shares and Warrants specified in the Schedule of Buyers at the Closing, subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 of this Agreement, (ii) each such Other Bridge Buyer and the Option Buyer shall be deemed a "Buyer" for all purposes of this Agreement and the other Transaction Documents.

(e) Series D Convertible Preferred Stock. If, prior to the Second Signing Date, (i) any Merger Partner Stockholder becomes an Other Bridge Buyer in accordance with Section 1(b) above or (ii) the Option Buyer elects to purchase Preferred Shares in accordance with Section 1(c) above (each of the foregoing, a "**Series D Trigger Event**"), and the rules of the Eligible Market on which the Company's equity securities are listed require a different voting conversion price for the securities the Other Bridge Buyers and/or the Option Buyer purchase then, subject to the terms of this Section 1(e): (A) the Company shall authorize and designate, out of the Company's authorized but unissued Preferred Stock, a new series of convertible preferred stock of the Company designated as Series D Convertible Preferred Stock, par value $0.0001 per share (the "**Series D Preferred Stock**"), the terms of which shall be set forth in a certificate of designation (the "**Series D Certificate of Designation**") having the same terms as the Certificate of Designation, except the voting conversion price and such other changes as are necessary to reflect the designation of a separate series; and (B) in lieu of shares of Series B Preferred Stock, each such Other Bridge Buyer and the Option Buyer, as applicable, shall purchase at the Closing, and the Company shall issue and sell to such Buyer, a number of shares of Series D Preferred Stock equal to the number of Preferred Shares set forth opposite such Buyer's name in column (3) of the Schedule of Buyers, as updated pursuant to Section 1(d) above. For all purposes of this Agreement, (1) references to the "Preferred Shares" shall be deemed to include such shares of Series D Preferred Stock, (2) references to the "Certificate of Designation" shall be deemed to include the Series D Certificate of Designation, and (3) references to the "Conversion Shares" shall be deemed to include the shares of Common Stock issuable pursuant to the terms of the Series D Certificate of Designation.

(f) Closing. The closing (the "**Closing**") of the purchase of the Preferred Shares and Warrants by the Buyers shall take place remotely via exchange of executed documents and funds immediately prior to the Initial Effective Time (as defined in the Merger Agreement) on the date on which the closing of the Mergers occurs (the "**Closing Date**"). As used herein "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

(g) Purchase Price. The aggregate purchase price for the Preferred Shares and Warrants to be purchased by each Buyer (the "**Purchase Price**") shall be the amount set forth opposite such Buyer's name in column (8) on the Schedule of Buyers (less, with respect to any Bridge Buyer or Other Bridge Buyer, any amounts then due and payable with respect to any Bridge Notes).

(h) Form of Payment. On or before the Closing Date, (i) each Buyer shall pay its respective Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(g) and, with respect to any Bridge Buyer or Other Bridge Buyer, any amounts then due and payable with respect to any Bridge Notes) to the Company for the Preferred Shares and Warrants to be issued and sold to such Buyer at the Closing, by wire transfer of immediately available funds in accordance with the Flow of Funds Letter (as defined below) and (ii) the Company shall deliver to each Buyer an electronic copy of the aggregate number of Preferred Shares and Warrants as is set forth opposite such Buyer's name in column (3) and column (4), respectively, of the Schedule of Buyers, each duly executed on behalf of the Company and registered in the name of such Buyer or its designee. If a Buyer has delivered the Purchase Price by wire transfer pursuant to clause (i) of this Section 1(h) prior to the Closing Date, and the Closing does not occur for any reason on or prior to the fifth (5th) Business Day following the expected Closing Date, the Company shall promptly (but not later than one (1) Business Day thereafter) return the Purchase Price paid pursuant to clause (i) of this Section 1(h) to such Buyer by wire transfer of United States dollars in immediately available funds to the account specified by such Buyer, and Preferred Shares and Warrants shall be deemed cancelled; provided that, unless this Agreement has been terminated pursuant to Section 8, such return of funds shall not terminate this Agreement or relieve the Buyers of their respective obligations to purchase the Preferred Shares and Warrants at the Closing.

2. BUYER'S REPRESENTATIONS AND WARRANTIES.

Each Buyer, severally and not jointly, represents and warrants to the Company with respect to only itself that, as of the date hereof, as of the Second Signing Date and as of the Closing Date:

(a) Organization; Authority. Such Buyer is an entity duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization with all requisite power and authority, and has taken all requisite corporate or other action, to enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) No Public Sale or Distribution. Such Buyer (i) is acquiring its Preferred Shares and Warrants, and (ii) upon conversion of its Preferred Shares will acquire the Conversion Shares issuable upon conversion thereof and upon exercise of its Warrants will acquire the Warrant Shares issuable upon exercise thereof, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the 1933 Act; provided, however, by making the representations herein, such Buyer does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the 1933 Act. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities in violation of applicable securities laws. For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity (as defined below) or any department or agency thereof.

(c) Accredited Investor Status. Such Buyer is, and will be on each date on which it converts any Preferred Shares or exercises Warrants, (a) either an "accredited investor" as that term is defined in Rule 501(a) of Regulation D or a "qualified institutional buyer" as defined in Rule 144A(a) under the 1933 Act, (b) if such Buyer is not a natural person, an "Institutional Account" as defined in FINRA Rule 4512(c) and (c) a sophisticated investor, experienced in investing in private equity transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including such Buyer's participation in the transactions contemplated by this Agreement.

(d) General Solicitation. Such Buyer acknowledges and agrees that such Buyer is purchasing the Securities directly from the Company. Such Buyer became aware of this offering of the Securities directly from the Company as a result of a pre-existing, substantive relationship with the Company, and/or its advisors (including, without limitation, attorneys, accountants, bankers, consultants and financial advisors), agents, control persons, representatives, affiliates, directors, officers, managers, members, and/or employees, and/or the representatives of such persons. Such Buyer is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other public solicitation or general advertisement. The purchase of the Securities by such Buyer has not been solicited by or through anyone other than the Company or Merger Partner.

(e) Brokers. There is no broker, investment banker, financial advisor, finder or other Person which has been retained by or is authorized to act on behalf of the Buyer who is entitled to any fee or commission for which the Company or Merger Partner will be liable in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby.

(f) Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

(g) Information. Such Buyer and its advisors, if any, have had an opportunity to review the Company's SEC Documents and have been furnished with all materials relating to the business, finances and operations of the Company and Merger Partner and materials relating to the offer and sale of the Securities that the Buyer deems necessary in order to make an investment decision with respect to the Securities. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company and Merger Partner. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer's right to rely on the Company's representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(h) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(i) Transfer or Resale. Such Buyer understands that the Securities are "restricted securities" and except as provided in the Registration Rights Agreement: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, or (B) pursuant to an exemption from such registration requirements; (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**"), and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; and (iii) except as set forth in the Registration Rights Agreement, neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Preferred Shares may be subject to a pledge created in favor of a holder's prime broker under and in accordance with its prime brokerage account with such broker, only if applicable contracts or other brokerage policy, rules or regulations require that a physical certificate be held by the holder's prime broker at such time be subject to such a pledge; provided, that, notwithstanding the existence of such pledge, the Preferred Shares may not be foreclosed upon or transferred in any manner that would violate the applicable Lock-Up Agreement. Such a pledge shall not be deemed a transfer, sale, or assignment of the Preferred Shares hereunder, and no Buyer effecting such a pledge shall be required to provide the Company with any notice thereof or otherwise deliver any documentation to the Company pursuant to this Agreement or any other Transaction Document (as defined in Section 3(b)).

(j) Validity; Enforcement. This Agreement has been duly and validly authorized, executed and delivered on behalf of such Buyer and constitutes the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with its terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies. The Registration Rights Agreement, when executed at the Closing in accordance with the terms of this Agreement, will be duly and validly authorized, executed and delivered on behalf of such Buyer and, at such time, will constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with its terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(k) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and the Registration Rights Agreement and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

(l) Residency. Such Buyer is a resident of that jurisdiction specified below its address on the Schedule of Buyers.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Buyers that, as of the date hereof and as of the Closing Date:

(a) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any Subsidiary (as defined below), taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments to be entered into in connection herewith or therewith or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Transaction Documents (as defined below). Except as disclosed in the SEC Documents, the Company has no Subsidiaries. "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary**."

(b) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. Each Subsidiary has the requisite power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party. The execution and delivery of this Agreement and the other Transaction Documents by the Company, and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Preferred Shares upon or after the effectiveness of the Certificate of Designation (the "**COD Effective Time**"), the reservation for issuance and issuance of the Conversion Shares issuable upon conversion of the Preferred Shares and the reservation for issuance and issuance of the Warrant Shares issuable upon exercise of the Warrants) have been duly authorized by the Board or other governing body, as applicable, and (other than receipt of the Shareholder Consent, the filing with the SEC of one or more Registration Statements (as defined in the Registration Rights Agreement) in accordance with the requirements of the Registration Rights Agreement, a Form D with the SEC and any other filings as may be required by any state securities agencies, the filing of the Certificate of Designation with the Nevada Secretary of State, and the notice and/or application(s) to the Principal Market for the issuance and sale of the Securities and the listing of the Conversion Shares and Warrant Shares for trading thereon in the time and manner required thereby (collectively, the "**Required Approvals**")) no further filing, consent or authorization is required by the Company, its Subsidiaries, their respective boards of directors or their shareholders or other governing body. This Agreement has been, and the other Transaction Documents to which it is a party will be prior to the Closing, duly executed and delivered by the Company, and each constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. Prior to the Closing, the Certificate of Designation in the form attached hereto as **Exhibit A** will have been filed with the Nevada Secretary of State and will be in full force and effect, enforceable against the Company in accordance with its terms and will not have been amended. "**Transaction Documents**" means, collectively, this Agreement, the Preferred Shares, the Certificate of Designation, the Lock-Up Agreements, the Registration Rights Agreement, the Irrevocable Transfer Agent Instructions (as defined below), the Warrants and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

(c) Issuance of Securities. The Preferred Shares and Warrants are duly authorized and, upon issuance in accordance with the terms of the Transaction Documents after the COD Effective Time, will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Liens**") with respect to the issuance thereof. As of the Closing, the Company shall have reserved from its duly authorized capital stock not less than 100% of the sum of the maximum number of Conversion Shares issuable upon conversion of the Preferred Shares (assuming for purposes hereof that any such conversion shall not take into account any limitations on the conversion of the Preferred Shares set forth in the Certificate of Designation) and the maximum number of Warrant Shares issuable upon exercise of the Warrants (assuming for purposes hereof that any such conversion shall not take into account any limitations on the conversion of the Warrant Shares set forth in the Warrants). Upon issuance or conversion in accordance with the terms of the Certificate of Designation, the Conversion Shares, when issued, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Upon exercise of the Warrants in accordance with their terms, the Warrant Shares, when issued, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Subject to the accuracy of the representations and warranties of the Buyers in this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Securities after the COD Effective Time and the reservation for issuance of the Conversion Shares and the Warrant Shares) will not (i) result in a violation of the Articles of Incorporation (as defined below) (including, without limitation, any certificate of designation contained therein), Bylaws (as defined below), certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Company or any of its Subsidiaries, or any capital stock or other securities of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of The NYSE American LLC (the **"Principal Market**") and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected; except in the case of each of clauses (ii) and (iii), such as would not have or reasonably be expected to result in a Material Adverse Effect.

(e) Consents. Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the Required Approvals and the filing of the Certificate of Designation with the Nevada Secretary of State) any Governmental Entity (as defined below) or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the Closing Date, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents. The Company is not in violation of the requirements of the Principal Market and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of the Common Stock in the foreseeable future. "**Governmental Entity**" means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Buyer (other than Ligand) is (i) an officer or director of the Company or any of its Subsidiaries, (ii) an "affiliate" (as defined in Rule 144) of the Company or any of its Subsidiaries or (iii) to its knowledge, a "beneficial owner" of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "**1934 Act**")). The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer's purchase of the Securities. The Company further represents to each Buyer that the Company's and each Subsidiary's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company, each Subsidiary and their respective representatives.

(g) No General Solicitation; Placement Agent's Fees. Neither the Company, nor any of its Subsidiaries or affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby, including, without limitation, in connection with the sale of the Securities. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with any such claim. Neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the offer or sale of the Securities.

(h) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or caused this offering of the Securities to require approval of shareholders of the Company for purposes of the 1933 Act or under any applicable shareholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, its Subsidiaries, their affiliates nor any Person acting on their behalf will take any action or steps that would require registration of the issuance of any of the Securities under the 1933 Act (other than pursuant to the Registration Rights Agreement) or cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(i) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares and Warrant Shares may increase in certain circumstances. The Company further acknowledges that its obligation to issue the Conversion Shares pursuant to the terms of the Preferred Shares in accordance with this Agreement and the Certificate of Designation and the Warrant Shares pursuant to the terms of the Warrants is, in each case, absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other shareholders of the Company.

(j) Application of Takeover Protections; Rights Agreement. The Company and the Board have taken all necessary action, if any, in order to render inapplicable any control share acquisition, combinations with interested stockholders, business combination, poison pill (including, without limitation, any distribution under a rights agreement), shareholder rights plan or other similar anti-takeover provision under the Articles of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities. The Company and the Board have taken all necessary action, if any, in order to render inapplicable any shareholder rights plan or similar arrangement relating to accumulations of beneficial ownership of shares of Common Stock or a change in control of the Company or any of its Subsidiaries.

(k) SEC Documents; Financial Statements. During the two (2) years prior to the date hereof, the Company has timely filed all reports, schedules, forms, proxy statements, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The Company has delivered or has made available to the Buyers or their respective representatives true, correct and complete copies of each of the SEC Documents requested by any such Buyer and not available on the EDGAR system. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). The reserves, if any, established by the Company or the lack of reserves, if applicable, are reasonable based upon facts and circumstances known by the Company on the date hereof and there are no loss contingencies that are required to be accrued by the Statement of Financial Accounting Standard No. 5 of the Financial Accounting Standards Board which are not provided for by the Company in its financial statements or otherwise. No other information provided by or on behalf of the Company to any of the Buyers which is not included in the SEC Documents (including, without limitation, information referred to in Section 2(g) of this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the "**Financial Statements**"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financial Statements to be in compliance with GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(l) Absence of Certain Changes. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, there has been no material adverse change and no material adverse development in the business, assets, liabilities, properties, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any of its Subsidiaries. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business or (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any Subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company and its Subsidiaries, individually and on a consolidated basis, after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent (as defined below). For purposes of this Section 3(l), "**Insolvent**" means, (i) with respect to the Company and its Subsidiaries, on a consolidated basis, (A) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total Indebtedness (as defined below), (B) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company and its Subsidiaries intend to incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature; and (ii) with respect to the Company and each Subsidiary, individually, (A) the present fair saleable value of the Company's or such Subsidiary's (as the case may be) assets is less than the amount required to pay its respective total Indebtedness, (B) the Company or such Subsidiary (as the case may be) is unable to pay its respective debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company or such Subsidiary (as the case may be) intends to incur or believes that it will incur debts that would be beyond its respective ability to pay as such debts mature. Neither the Company nor any of its Subsidiaries has engaged in any business or in any transaction, and is not about to engage in any business or in any transaction, for which the Company's or such Subsidiary's remaining assets constitute unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

(m) No Undisclosed Events, Liabilities, Developments or Circumstances. Other than the transactions contemplated by the Transaction Documents, no event, liability, development or circumstance has occurred or exists, or is reasonably expected to exist or occur with respect to the Company, any of its Subsidiaries or any of their respective businesses, properties, liabilities, prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced, (ii) could have a material adverse effect on any Buyer's investment hereunder or (iii) could have a Material Adverse Effect.

(n) Conduct of Business; Regulatory Permits. Neither the Company nor any of its Subsidiaries is in violation of any term of or in default under its Articles of Incorporation, any certificate of designation, preferences or rights of any other outstanding series of preferred stock of the Company or any of its Subsidiaries or Bylaws or their organizational charter, certificate of formation, memorandum of association, articles of association, Articles of Incorporation or certificate of incorporation or bylaws, respectively. Neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which could not, individually or in the aggregate, have a Material Adverse Effect. Without limiting the generality of the foregoing, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that could reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future. During the two years prior to the date hereof, (i) the Common Stock has been listed or designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit. There is no agreement, commitment, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is a party which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted other than such effects, individually or in the aggregate, which have not had and would not reasonably be expected to have a Material Adverse Effect on the Company or any of its Subsidiaries.

(o) Foreign Corrupt Practices. None of the Company, any Subsidiary or any director, officer, agent, employee, nor any other person acting for or on behalf of the foregoing (individually and collectively, a "**Company Affiliate**") have violated the U.S. Foreign Corrupt Practices Act (the "**FCPA**") or any other applicable anti-bribery or anti-corruption laws, nor has any Company Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "**Government Official**") or to any person under circumstances where such Company Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or

(ii) assisting the Company or its Subsidiaries in obtaining or retaining business for or with, or directing business to, the Company or its Subsidiaries.

(p) Sarbanes-Oxley Act. The Company and each Subsidiary is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, and any and all applicable rules and regulations promulgated by the SEC thereunder.

(q) Transactions With Affiliates. Except as disclosed in the SEC Documents, no current or former employee, partner, director, officer or shareholder (direct or indirect) of the Company or its Subsidiaries, or any associate, or, to the knowledge of the Company, any affiliate of any thereof, or any relative with a relationship no more remote than first cousin of any of the foregoing, is presently, or has ever been, (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer or shareholder or such associate or affiliate or relative Subsidiaries (other than for ordinary course services as employees, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less than 5% of the common stock of a company whose securities are traded on or quoted through an Eligible Market (as defined in the Certificate of Designation)), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. No employee, officer, shareholder or director of the Company or any of its Subsidiaries or member of his or her immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company, and (iii) for other standard employee benefits made generally available to all employees or executives (including stock option agreements outstanding under any stock option plan approved by the Board).

(r) Equity Capitalization.

(i) Definitions:

(A) "**Common Stock**" means (x) the Company's shares of common stock, $0.0001 par value per share, and (y) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(B) "**Preferred Stock**" means (x) the Company's blank check preferred stock, $0.0001 par value per share, the terms of which may be designated by the Board in a certificate of designation and (y) any capital stock into which such preferred stock shall have been changed or any share capital resulting from a reclassification of such preferred stock (other than a conversion of such preferred stock into Common Stock in accordance with the terms of such certificate of designation).

(ii) Authorized and Outstanding Capital Stock. As of the close of business on the Business Day immediately prior to the date of this Agreement, the authorized capital stock of the Company consists of (A) 200,000,000 shares of Common Stock, of which, 3,931,829 are issued and outstanding and (B) 20,000,000 shares of Preferred Stock, 150,000 shares of which have been designated as Series A Convertible Preferred Stock, 51,479 of which are issued and outstanding, and 5,000 shares of which have been designated as Series C Convertible Redeemable Preferred Stock, 2,600 of which are issued and outstanding. No shares of Common Stock are held in the treasury of the Company. "**Convertible Securities**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

(iii) Valid Issuance; Available Shares; Affiliates. All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and nonassessable. As of the close of business on the Business Day immediately prior to the date of this Agreement, 2,668,159 shares of Common Stock are (A) reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Preferred Shares and the Warrants) and (B) 5,254,423 are owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries. Other than Ligand and except as disclosed in the SEC Documents, to the Company's knowledge, no Person owns 10% or more of the Company's issued and outstanding shares of Common Stock (calculated based on the assumption that all Convertible Securities (as defined below), whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein).

(iv) Existing Securities; Obligations. Except as disclosed in the SEC Documents: (A) none of the Company's or any Subsidiary's shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) other than the Warrants, there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act (except pursuant to the Registration Rights Agreement); (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (F) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement.

(v) Organizational Documents. The Company has furnished to the Buyers true, correct and complete copies of the Company's Articles of Incorporation (including, without limitation, any certificate of designation contained therein), as amended and as in effect on the date hereof (the "**Articles of Incorporation**"), and the Company's bylaws, as amended and as in effect on the date hereof (the "**Bylaws**"), and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto.

(s) Indebtedness and Other Contracts. Neither the Company nor any of its Subsidiaries, (i) except as disclosed in the SEC Documents, has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound, (ii) is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect, (iii) has any financing statements securing obligations in any amounts filed in connection with the Company or any of its Subsidiaries, other than pursuant to the Pledge Agreement, dated as of November 6, 2025, by and among the Company, as pledgor, and Ligand, as secured party, in its capacity as collateral agent; (iv) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (v) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(t) Litigation. Except as disclosed in the SEC Documents, there is no action, suit, arbitration, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, other Governmental Entity, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such. No director, officer or employee of the Company or any of its subsidiaries has willfully violated 18 U.S.C. §1519 or engaged in spoliation in reasonable anticipation of litigation. Without limitation of the foregoing, there has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1933 Act or the 1934 Act. After reasonable inquiry of its employees, the Company is not aware of any fact which might result in or form the basis for any such action, suit, arbitration, investigation, inquiry or other proceeding. Neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity.

(u) Tax Status. The Company and each of its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company and its Subsidiaries know of no basis for any such claim. The Company is not operated in such a manner as to qualify as a passive foreign investment company, as defined in Section 1297 of the Code.

(v) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any of its Subsidiaries and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise could be reasonably likely to have a Material Adverse Effect.

(w) Acknowledgement Regarding Buyers' Trading Activity. It is understood and acknowledged by the Company that, subject to compliance with the terms of the Lock-Up Agreements, (i) following the public disclosure of the transactions contemplated by the Transaction Documents, in accordance with the terms thereof, none of the Buyers have been asked by the Company or any of its Subsidiaries to agree, nor has any Buyer agreed with the Company or any of its Subsidiaries, to desist from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long and/or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the Securities for any specified term; (ii) any Buyer, and counterparties in "derivative" transactions to which any such Buyer is a party, directly or indirectly, presently may have a "short" position in the Common Stock which was established prior to such Buyer's knowledge of the transactions contemplated by the Transaction Documents; (iii) each Buyer shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) each Buyer may rely on the Company's obligation to timely deliver shares of Common Stock upon exercise, conversion or exchange, as applicable, of the Securities as and when required pursuant to the Transaction Documents for purposes of effecting trading in the Common Stock of the Company. The Company further understands and acknowledges that following the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the Press Release (as defined below), subject to compliance with the terms of the Lock-Up Agreements, one or more Buyers may engage in hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock) at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value and/or number of the Warrant Shares or Conversion Shares, as applicable, deliverable with respect to the Securities are being determined and such hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock), if any, can reduce the value of the existing shareholders' equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted. The Company acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the Certificate of Designation, the Warrants or any other Transaction Document or any of the documents executed in connection herewith or therewith, subject to compliance with the terms of the Lock-Up Agreements.

(x) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company or any of its Subsidiaries.

(y) Registration Eligibility. The Company meets the registrant requirements set forth in General Instruction I.A of Form S-3 (including General Instruction I.A.3) and is eligible to register the Registrable Securities (as defined in the Registration Rights Agreement) for resale by the Buyers on a registration statement on Form S-3 promulgated under the 1933 Act. The Company has no reason to believe that it will not continue to satisfy such requirements following the consummation of the Mergers. The Company is not, and has never been, an issuer subject to Rule 144(i) under the 1933 Act.

(z) Transfer Taxes. On the Closing Date, all stock transfer or other similar taxes which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(aa) Illegal or Unauthorized Payments; Political Contributions. Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any of its Subsidiaries or any other business entity or enterprise with which the Company or any Subsidiary is or has been affiliated or associated, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office except for personal political contributions not involving the direct or indirect use of funds of the Company or any of its Subsidiaries.

(bb) Money Laundering. The Company and its Subsidiaries are in compliance with, and have not previously violated, the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations, including, without limitation, the laws, regulations and Executive Orders and sanctions programs administered by the U.S. Office of Foreign Assets Control, including, but not limited, to (i) Executive Order 13224 of September 23, 2001 entitled, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)); and (ii) any regulations contained in 31 CFR, Subtitle B, Chapter V.

(cc) Management. During the past three year period, no current or former officer or director or, to the knowledge of the Company, no current ten percent (10%) or greater shareholder of the Company or any of its Subsidiaries has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such person from, or otherwise limiting, the following activities:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the United States Commodity Futures Trading Commission or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any particular type of business practice; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such person to engage in any activity described in the preceding sub paragraph, or to be associated with persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.

(dd) No Disagreements with Accountants and Lawyers(b) . There are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents. In addition, on or prior to the date hereof, the Company had discussions with its accountants about its financial statements previously filed with the SEC. Based on those discussions, the Company has no reason to believe that it will need to restate any such financial statements or any part thereof.

(ee) No Disqualification Events(c) . With respect to Securities to be offered and sold hereunder in reliance on Rule 506(b) under the 1933 Act ("**Regulation D Securities**"), none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering contemplated hereby, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale (each, an "**Issuer Covered Person**" and, together, "**Issuer Covered Persons**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act (a "**Disqualification Event**"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Buyers a copy of any disclosures provided thereunder.

(ff) Other Covered Persons(d) . The Company is not aware of any Person that has been or will be paid (directly or indirectly) remuneration for solicitation of Buyers or potential purchasers in connection with the sale of any Regulation D Securities.

(gg) No Additional Agreements. The Company does not have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

(hh) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Buyers or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company, Merger Partner or any of their respective Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents. The Company understands and confirms that each of the Buyers will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to the Buyers regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of the Company or any of its Subsidiaries is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All of the written information furnished after the date hereof by or on behalf of the Company or any of its Subsidiaries to each Buyer pursuant to or in connection with this Agreement and the other Transaction Documents, taken as a whole, will be true and correct in all material respects as of the date on which such information is so provided and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. Each press release issued by the Company or any of its Subsidiaries during the twelve (12) months preceding the date of this Agreement did not at the time of release contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by the Company but which has not been so publicly disclosed. All financial projections and forecasts that have been prepared by or on behalf of the Company or any of its Subsidiaries and made available to you have been prepared in good faith based upon reasonable assumptions and represented, at the time each such financial projection or forecast was delivered to each Buyer, the Company's best estimate of future financial performance (it being recognized that such financial projections or forecasts are not to be viewed as facts and that the actual results during the period or periods covered by any such financial projections or forecasts may differ from the projected or forecasted results). The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

(ii) Clinical Data and Regulatory Compliance. Except as would not reasonably be expected to result in a Material Adverse Effect: (i) the preclinical tests and clinical trials, and other studies used to support regulatory approval (collectively, "**studies**") being conducted by the Company were and, if still pending, are being conducted in all material respects in accordance with applicable Health Care Laws; (ii) neither the Company nor any of its Subsidiaries has during the last three years received any written notice of, or written correspondence from, any Regulatory Agency requiring the termination or suspension of or imposing any clinical hold on any clinical trials; and (iii) the Company and its Subsidiaries have each operated during the last three years and currently are in compliance in all material respects with all applicable rules and regulations of the Regulatory Agencies.

(jj) Compliance with Health Care Laws. Except as would not reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries are in compliance with all Health Care Laws to the extent applicable to the Company's current business and research use only products. For purposes of this Agreement, "**Health Care Laws**" means: (i) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) and the Public Health Service Act (42 U.S.C. Section 201 et seq.), and the regulations promulgated thereunder; (ii) all applicable federal, state, local and foreign health care fraud and abuse laws, including, without limitation, the Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)); (iii) HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. Section 17921 et seq.); (iv) licensure, quality, safety and accreditation requirements under applicable federal, state, local or foreign laws or regulatory bodies; (v) all other local, state, federal, national, supranational and foreign laws, relating to the regulation of the Company or its Subsidiaries; and (vi) the regulations promulgated pursuant to such statutes and any state or non-U.S. counterpart thereof. Neither the Company nor any of its Subsidiaries has during the last three years received written notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any court or arbitrator or governmental or regulatory authority alleging that any product, operation or activity is in material violation of any Health Care Laws nor, to the Company's knowledge, is any such claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action threatened. During the past three years, the Company and its Subsidiaries have filed, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Health Care Laws, and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and accurate on the date filed in all material respects (or were corrected or supplemented by a subsequent submission).

(kk) Accounting Controls and Disclosure Controls and Procedures. Except as disclosed in the Company's reports filed with the SEC, The Company maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including policies and procedures sufficient to provide reasonable assurance (i) that the Company maintains records that in reasonable detail accurately and fairly reflect the Company's transactions and dispositions of assets, (ii) that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, (iii) that receipts and expenditures are made only in accordance with authorizations of management and the Board of Directors and (iv) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the Company's financial statements. Except as disclosed in the Company's reports filed with the SEC, since the end of the Company's most recent audited fiscal year, there has been (a) no material weaknesses in the design or operation of the Company's internal control over financial reporting (whether or not remediated) and (b) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) are designed to provide reasonable assurance that all information (both financial and non-financial) required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure.

(ll) Merger Agreement. The Merger Agreement has been duly and validly authorized, executed and delivered by the Company, Merger Partner, Merger Sub I and Merger Sub II and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the Company, Merger Partner, Merger Sub I and Merger Sub II enforceable against the Company, Merger Partner, Merger Sub I and Merger Sub II in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability. As of the date of the Merger Agreement and as of the date hereof, the representations and warranties of the Company, Merger Sub I and Merger Sub II contained in Article IV of the Merger Agreement (as qualified therein (including by the SEC Reports) and in the disclosure schedules thereto) were, as of the date of the Merger Agreement, and are, as of the date hereof, true and correct in all material respects (or, if any such representations or warranties are qualified by materiality, material adverse effect or similar language, true and correct in all respects). To the Company's knowledge, the representations and warranties of Merger Partner contained in Article III of the Merger Agreement (as qualified therein and in the disclosure schedules thereto) were, as of the date of the Merger Agreement, and are, as of the date hereof, true and correct in all material respects (or, if any such representations or warranties are qualified by materiality, material adverse effect or similar language, true and correct in all respects).

(mm) Investment Company. The Company is not, and immediately after giving effect to the offer and sale of the Securities and the application of the proceeds thereof as described in Section 4(d), will not be, required to be registered as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

4. COVENANTS.

(a) Reasonable Best Efforts. Each Buyer shall use its reasonable best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 6 of this Agreement. The Company shall use its reasonable best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Blue Sky. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Buyers at the Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to the Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable "Blue Sky" laws), and the Company shall comply with all applicable foreign, federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Buyers.

(c) Reporting Status. Until the date on which the Buyers shall have sold all of the Registrable Securities (the "**Reporting Period**"), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination. The Company shall take all actions necessary to maintain its eligibility to register the Registrable Securities for resale by the Buyers on Form S-3, including, without limitation, timely filing (within the time periods prescribed by Form 8-K, without reliance on any extension) a Current Report on Form 8-K pursuant to Items 2.01 and 9.01 thereof with respect to the Mergers, including the financial statements of Merger Partner and the pro forma financial information required by Item 9.01 of Form 8-K.

(d) Use of Proceeds. The Company will use the proceeds from the sale of the Securities to repay certain indebtedness of Merger Partner and for working capital and general corporate purposes.

(e) Financial Information. For as long as the Company is required to file reports pursuant to Section 13 or Section 15(d) of the 1934 Act, the Company agrees to send the following to each Investor (as defined in the Registration Rights Agreement) during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any interim reports or any consolidated balance sheets, income statements, shareholders' equity statements and/or cash flow statements for any period other than annual, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the 1933 Act, (ii) unless the following are either filed with the SEC through EDGAR or are otherwise widely disseminated via a recognized news release service (such as PR Newswire), on the same day as the release thereof, e-mail copies of all press releases issued by the Company or any of its Subsidiaries and (iii) unless the following are filed with the SEC through EDGAR, copies of any notices and other information made available or given to the shareholders of the Company generally, contemporaneously with the making available or giving thereof to the shareholders.

(f) Listing. The Company shall promptly secure the listing or designation (as the case may be) of all of the Conversion Shares and Warrant Shares upon each national securities exchange, if any, upon which the Common Stock is then listed (subject to official notice of issuance) and shall maintain such listing of all Registrable Securities from time to time issuable under the terms of the Transaction Documents on such national securities exchange. The Company shall maintain the Common Stock's listing on The New York Stock Exchange, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market or the Nasdaq Global Select Market (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f).

(g) Fees. The Company shall reimburse the Buyers for all reasonable costs and expenses incurred by it or its affiliates in connection with the structuring, documentation, negotiation and closing of the transactions contemplated by the Transaction Documents, a non-accountable amount of $200,000 for the legal fees of outside counsel and disbursements of Kelley Drye & Warren LLP, counsel to Nomis Bay and a non-accountable amount of $300,000 for the legal fees of Paul Hastings LLP, counsel to Ligand (the "**Transaction Expenses**") which amounts shall be withheld by Nomis Bay and Ligand from their respective Purchase Price at the Closing, provided, that the Company shall promptly reimburse Kelley Drye & Warren LLP and Paul Hastings LLP on demand for all Transaction Expenses not so reimbursed through such withholding at the Closing. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, DTC (as defined below) fees or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.

(h) [Reserved].

(i) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction. The Company shall, on or before 9:00 a.m., New York time, on the first (1st) Business Day immediately following the date of the Merger Agreement, issue a press release (the "**Press Release**") reasonably acceptable to the Buyers disclosing all the material terms of the transactions contemplated by the Transaction Documents and the Merger Agreement. On or before 9:00 a.m., New York time, on the first (1st) Business Day immediately following the date of the Merger Agreement, the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents and the Merger Agreement in the form required by the 1934 Act and attaching all the material Transaction Documents (including, without limitation, this Agreement (and all schedules to this Agreement), the form of Certificate of Designation, the form of Warrants the form of Lock-Up Agreements, and the form of the Registration Rights Agreement, and excluding the Irrevocable Transfer Agent Instructions) (including all attachments, the "**8-K Filing**"). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) provided to any of the Buyers by the Company, Merger Partner and their respective Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents and the Merger Agreement. In addition, effective upon the filing of the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement related to the Agreement and the transactions contemplated hereby, whether written or oral, between the Company and its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Buyers on the other hand, shall terminate (other than under any existing commercial or license agreement between the Company and its Subsidiaries, on the one hand, and Ligand on the other hand).

(ii) Limitations on Disclosure. Except to the extent required by the terms and conditions of the transactions contemplated by the Transaction Documents, including this Agreement, or as required by any applicable securities law (but solely to the extent the Company complies in full with its disclosure obligations in connection therewith as also provided in the Transaction Documents, including this Agreement, following any such disclosure), the Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to provide any Buyer with any material, non-public information regarding the Company, Merger Partner or any of their respective Subsidiaries from and after the date hereof without the express prior written consent of such Buyer (which may be granted or withheld in such Buyer's sole discretion). To the extent that the Company delivers any material, non-public information to the Buyer without such Buyer's consent, the Company hereby covenants and agrees that such Buyer shall not have any duty of confidentiality with respect to such material, non-public information. Subject to the foregoing, neither the Company, its Subsidiaries nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, the Company shall be entitled, without the prior approval of any Buyer, to make the Press Release and any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of the applicable Buyer (which may be granted or withheld in such Buyer's sole discretion), except as otherwise required by law, rule or regulation, or in connection with any registration statement contemplated by the Registration Rights Agreement (to the extent such Investor has not elected in writing to have such Investor's Registrable Securities be excluded from such Registration Statement), the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of such Buyer in any filing, announcement, release or otherwise. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that no Buyer shall have (unless expressly agreed to by a particular Buyer after the date hereof in a written definitive and binding agreement executed by the Company and such particular Buyer (it being understood and agreed that no Buyer may bind any other Buyer with respect thereto)), any duty of confidentiality with respect to any material, non-public information regarding the Company, Merger Partner or any of their respective Subsidiaries.

(j) Additional Registration Statements. Until the Applicable Date (as defined below) and at any time thereafter during the Registration Period (as defined in the Registration Rights Agreement) while any Registration Statement is not effective or the prospectus contained therein is not available for use, the Company shall not file a registration statement or an offering statement under the 1933 Act relating to securities that are not the Registrable Securities (other than a registration statement on Form S-8 or such supplements or amendments to registration statements that are outstanding and have been declared effective by the SEC as of the date hereof (solely to the extent necessary to keep such registration statements effective)). "**Applicable Date**" means the earlier of (x) the first date on the initial Registration Statement (as defined in the Registration Rights Agreement) registering the resale by the Buyers of all the Registrable Securities pursuant to the Registration Rights Agreement is declared effective by the SEC (the "**Registration Statement Effective Date**") (and each prospectus contained therein is available for use on such date) or (y) the first date on which all of the Registrable Securities are eligible to be resold by the Buyers (assuming for such purpose that no Buyer is an affiliate of the Company) pursuant to Rule 144 (or, if a Current Public Information Failure has occurred and is continuing, such later date after which the Company has cured such Current Public Information Failure).

(k) [Reserved].

(l) Reservation of Shares. So long as any of the Preferred Shares and Warrants are or remain outstanding, the Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than 100% of the maximum number of shares of Common Stock issuable upon conversion of all the Preferred Shares and exercise of the Warrants then outstanding (assuming for purposes hereof that any such conversion shall not take into account any limitations on the conversion of the Preferred Shares set forth in the Certificate of Designation) (collectively, the "**Required Reserve Amount**"); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 4(l) be reduced other than proportionally in connection with any conversion, exercise and/or redemption, as applicable of Preferred Shares and Warrants. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of shareholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain shareholder approval of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(m) Conduct of Business. The business of the Company and its Subsidiaries shall not be conducted in violation of any law, ordinance or regulation of any Governmental Entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(n) [Reserved].

(o) [Reserved].

(p) [Reserved].

(q) [Reserved].

(r) [Reserved].

(s) Corporate Existence. So long as any Buyer beneficially owns any Preferred Shares, the Company shall not be party to any Fundamental Transaction (as defined in the Certificate of Designation) unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Certificate of Designation. So long as any Buyer beneficially owns any Warrants, the Company shall not be party to any Fundamental Transaction (as defined in the Warrants) unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Warrants.

(t) No Conflicting Agreements. The Company will not take any action, enter into any agreement or make any commitment that would conflict or interfere in any material respect with the Company's obligations to the Buyers under the Transaction Documents.

(u) Conversion and Exercise Procedures. Each of the form of Exercise Notice (as defined in the Warrants) included in the Warrants and the form of Conversion Notice (as defined in the Certificate of Designation) included in the Certificate of Designation set forth the totality of the procedures required of the Buyers in order to exercise the Warrants or convert the Preferred Shares. Except as provided in Section 5(d), no additional legal opinion, other information or instructions shall be required of the Buyers to exercise their Warrants or convert their Preferred Shares. The Company shall honor exercises of the Warrants and conversions of the Preferred Shares and shall deliver the Conversion Shares and Warrant Shares in accordance with the terms, conditions and time periods set forth in the Certificate of Designation and Warrants. Without limiting the preceding sentences, no ink-original Conversion Notice or Exercise Notice shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Conversion Notice or Exercise Notice form be required in order to convert the Preferred Shares or exercise the Warrants.

(v) Regulation M. The Company will not take any action prohibited by Regulation M under the 1934 Act, in connection with the distribution of the Securities contemplated hereby.

(w) General Solicitation. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act) or any person acting on behalf of the Company or such affiliate will solicit any offer to buy or offer or sell the Securities by means of any form of general solicitation or general advertising within the meaning of Regulation D, including: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio; and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(x) Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act), or any person acting on behalf of the Company or such affiliate will sell, offer for sale, or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the 1933 Act) which will be integrated with the sale of the Securities in a manner which would require the registration of the Securities under the 1933 Act or require shareholder approval under the rules and regulations of the Principal Market and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of the Principal Market, with the issuance of Securities contemplated hereby.

(y) Notice of Disqualification Events. The Company will notify the Buyers in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

(z) Shareholder Approval. The Company shall have obtained the prior written consent of the requisite shareholders (the "**Shareholder Consent**") authorizing and approving the filing of the Certificate of Designation, exercise of the Warrants and the issuance of all of the Securities in compliance with the rules and regulations of the Principal Market (without regard to any limitations on conversion set forth in the Preferred Shares,) and informed the shareholders of the Company of the receipt of the Shareholder Consent by preparing and filing with the SEC, as promptly as practicable after the date hereof, an information statement on Schedule 14C as contemplated by the Merger Agreement.

(aa) No Waiver of Lock-Up Agreements. The Company shall not amend, waive, modify or fail to use reasonable best efforts to enforce any provision of any Lock-Up Agreement. For the avoidance of doubt, no Buyer shall be a third party beneficiary of any Lock-Up Agreement.

(bb) Merger Agreement. The Company shall not amend, modify, or waive any provision under the Merger Agreement (as the same exists on the date of this Agreement) in any manner without having received the prior approval of the Series B Required Holders (as defined below).

(cc) Closing Documents. On or prior to fourteen (14) calendar days after the Closing Date, the Company agrees to deliver, or cause to be delivered, to each Buyer and Kelley Drye & Warren LLP and Paul Hastings LLP a complete closing set of the executed Transaction Documents, Securities and any other document required to be delivered to any party pursuant to Section 7 hereof or otherwise.

(dd) [Reserved].

(ee) Transfer of Bridge Notes to the Company at Closing. In partial satisfaction of the Purchase Price to which the Company is entitled hereunder, each Bridge Buyer and each Other Bridge Buyer agrees that such Bridge Buyer's or Other Bridge Buyer's Bridge Note shall be automatically transferred to the Company effective as of the Closing and cancelled as fully paid.

5. REGISTER; TRANSFER AGENT INSTRUCTIONS; LEGEND.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Preferred Shares and the Warrants in which the Company shall record the name and address of the Person in whose name the Preferred Shares and the Warrants have been issued (including the name and address of each transferee), the aggregate number of Preferred Shares held by such Person, the number of Conversion Shares issuable pursuant to the terms of the Preferred Shares and the number of Warrant Shares issuable upon exercise of the Warrants held by such Person. The Company shall keep the register open and available at all times during business hours for inspection of any Buyer or its legal representatives.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable, the "**Transfer Agent**") in a form reasonably acceptable to each of the Buyers (the "**Irrevocable Transfer Agent Instructions**") to issue certificates or credit shares, registered in the name of each Buyer or its respective nominee(s), for the Conversion Shares and the Warrant Shares in such amounts as specified from time to time by each Buyer to the Company upon conversion of the Preferred Shares or exercise of the Warrants, as applicable, which, if the Buyer complies with the applicable requirements of the Certificate of Designation, the Warrants or this Agreement with respect to the delivery of certain certificates and information with respect to the contemporaneous sale of the Conversion Shares or Warrant Shares, as applicable, including the Resale Eligibility Conditions, shall be credited to the applicable balance accounts at The Depository Trust Company ("**DTC**"). The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5(b), and stop transfer instructions to give effect to Section 2(g) hereof, will be given by the Company to its transfer agent with respect to the Securities, and that there will be no other restrictions on the transfer of the Securities, other than restrictions under applicable securities laws and restrictions as provided in this Agreement and the other Transaction Documents. If a Buyer effects a sale, assignment or transfer of the Securities in accordance with Section 2(g), the Company shall permit the transfer and shall promptly instruct its transfer agent to issue one or more certificates or credit shares to the applicable balance accounts on the books of the transfer agent (in the case of Preferred Shares or Warrants) or on the books of the transfer agent or at DTC (in the case of Conversion Shares or Warrant Shares) in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment, provided that the Company has received customary representations and other documentation reasonably acceptable to the Company in connection therewith. In the event that such sale, assignment or transfer involves Conversion Shares or Warrant Shares sold, assigned or transferred pursuant to an effective registration statement or in compliance with Rule 144, the Company shall use reasonable best efforts to cause the transfer agent to issue such shares to such Buyer, assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 5(d) below, provided that the Company has received customary representations and other documentation reasonably acceptable to the Company in connection therewith. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that a Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. The Company shall cause its counsel to issue a confirmation referred to in the Irrevocable Transfer Agent Instructions to the Company's transfer agent on each Effective Date of a Registration Statement (as defined in the Registration Rights Agreement) registering Registrable Securities in accordance with the terms of the Registration Rights Agreement, which confirmation shall confirm that the Registration Statement has been declared effective. Any fees (with respect to the transfer agent, counsel to the Company or otherwise) associated with the issuance of such opinion or the removal of any legends on any of the Securities shall be borne by the Company. The "**Resale Eligibility Conditions**" shall refer to the following conditions: such Securities (i) (A) may then be sold by the holder of the Securities pursuant to an available and effective registration statement and (B) the holder provides such documentation or other information evidencing the sale of the Securities as the Company, the Transfer Agent or legal counsel to the Company shall reasonably request or (ii) may be resold by the holder without further condition (including current public information requirements) pursuant to Rule 144 of the 1933 Act, as applicable.

(c) Legends. Each Buyer understands that the Securities have been issued (or will be issued in the case of the Conversion Shares and the Warrant Shares) pursuant to an exemption from registration or qualification under the 1933 Act and applicable state securities laws, and except as set forth below, the Securities shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

> [NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE [CONVERTIBLE][EXERCISABLE] HAVE BEEN][THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT (I) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR (II) PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AS EVIDENCED BY AN OPINION OF COUNSEL OF THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (III) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT.

(d) Removal of Legends. Certificates evidencing Conversion Shares or Warrant Shares shall not be required to contain the legend set forth in Section 5(c) above or any other legend (i) at any time that there is an effective registration statement (including a Registration Statement) covering the resale of such Securities under the 1933 Act, to the extent such Buyer provides a customary representation letter from the applicable Buyer and a customary representation letter from such Buyer's broker that such Conversion Shares or Warrant Shares will be sold only pursuant to such effective Registration Statement or another available exemption from registration, in each case in a form reasonably acceptable to the Company, and such other documentation or other information as the Company, the Transfer Agent or legal counsel to the Company shall reasonably request (which, for the avoidance of doubt, shall not include a legal opinion of Buyer's counsel, and shall not require evidence that a sale of such Securities has already occurred), (ii) following a sale pursuant to an effective registration statement (including a Registration Statement) covering the resale of such Securities under the 1933 Act to the extent such Buyer provides such documentation or other information evidencing the sale of the Securities as the Company, the Transfer Agent or legal counsel to the Company shall reasonably request (which, for the avoidance of doubt, shall not include a legal opinion), (iii) following any sale of such Securities pursuant to Rule 144 (assuming the transferee is not an affiliate of the Company), or (iv) if such Securities are eligible to be sold, assigned or transferred under Rule 144 without volume or manner-of-sale restrictions and without the requirement for the Company to comply with current public information requirements (provided that a Buyer provides the Company with reasonable assurances that such Securities are eligible for sale, assignment or transfer under Rule 144 which shall not include an opinion of Buyer's counsel). If a legend is not required pursuant to the foregoing, the Company shall no later than two (2) Trading Days (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date such Buyer delivers such legended certificate representing such Securities to the Company) following the delivery by a Buyer to the Company or the transfer agent (with notice to the Company) of a legended certificate representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from such Buyer as may be required above in this Section 5(d), as directed by such Buyer, either: (A) provided that the Company's transfer agent is participating in the DTC Fast Automated Securities Transfer Program ("**FAST**") and the Resale Eligibility Conditions are satisfied and such Securities are Conversion Shares or Warrant Shares, credit the aggregate number of shares of Common Stock to which such Buyer shall be entitled to such Buyer's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian ("**DWAC**") system upon receipt of such Buyer broker's request through DTC's DRS/DWAC system or (B) if the Company's transfer agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, issue and deliver (via reputable overnight courier) to such Buyer, a book entry position or certificate representing such Securities, registered in the name of such Buyer or its designee (the date by which such credit is so required to be made to the balance account of such Buyer's or such Buyer's designee with DTC or such certificate is required to be delivered to such Buyer pursuant to the foregoing is referred to herein as the "**Required Delivery Date**", and the date such shares of Common Stock are actually delivered without restrictive legend to such Buyer or such Buyer's designee with DTC, as applicable, the "**Share Delivery Date**"). The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of Securities or the removal of any legends with respect to any Securities in accordance herewith. The Transfer Agent shall not be liable for any delay in delivery of shares caused by the Holder's broker failing to initiate the electronic request in the FAST system.

(e) Failure to Timely Deliver; Buy-In. If the Company fails, for any reason or for no reason, to issue and deliver (or cause to be delivered) to a Buyer (or its designee) by the Required Delivery Date, if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, a certificate for the number of Conversion Shares to which such Buyer is entitled and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, to credit the balance account of such Buyer or such Buyer's designee with DTC upon receipt of such Buyer broker request through DTC's DRS/DWAC system for such aggregate number of Conversion Shares submitted for legend removal by such Buyer pursuant to Section 5(d) above (a "**Delivery Failure**"), and if on or after such Trading Day such Buyer acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Buyer of shares of Common Stock submitted for legend removal by such Buyer pursuant to Section 5(d) above that such Buyer is entitled to receive from the Company (a "**Buy-In**"), then the Company shall, in such Buyer's discretion as set forth in a written request to the Company (which may be an e-mail), either (i) within two (2) Business Days after receipt of such Buyer's request, pay cash to such Buyer in an amount equal to such Buyer's total purchase price (including brokerage commissions, stock loans and other out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit such Buyer's (or such Buyer's designee) balance account at DTC shall terminate and such shares shall be cancelled; provided that, in lieu of paying the Buy-In Price in cash, the Company may, at its option, promptly reissue (if surrendered) the number of Preferred Shares equal to the number of Preferred Shares submitted for conversion (in which case, such Conversion Notice shall be deemed rescinded and the Company's obligation to issue such Conversion Shares shall terminate and be cancelled) and increase the Additional Amount (as defined in the Certificate of Designation) with respect to such Preferred Shares, pro rata per share, by the amount of such applicable Buy-In Payment Amount (as defined below), or (ii) within two (2) Business Days after receipt of such Buyer's request, promptly honor its obligation to so deliver to such Buyer a certificate or certificates or credit the balance account of such Buyer (or such Buyer's designee) with DTC upon receipt of such Buyer's broker request through DTC's DRS/DWAC system representing such aggregate number of shares of Common Stock that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to such Buyer in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of Conversion Shares that the Company was required to deliver to such Buyer by the Required Delivery Date multiplied by (B) the average VWAP (as defined in the Certificate of Designation) of the Common Stock during the period commencing on the date of the delivery by such Buyer to the Company of the applicable Conversion Shares and ending on the applicable Required Delivery Date (each, a "**Buy-In Payment Amount**"), provided, that in lieu of paying the Buy-In Payment Amount in cash, the Company may, at its election, increase the Additional Amount (as defined in the Certificate of Designation) with respect to such Preferred Shares, pro rata per share, by the amount of such applicable Buy-In Payment Amount. In the event of a Delivery Failure with respect to Warrant Shares, within two (2) Business Days after receipt of such Buyer's request, the Company will promptly honor its obligation to deliver to such Buyer the Warrant Shares and pay cash to such Buyer in an amount equal to the excess (if any) of Buyer's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased in the Buy-In, less the product of (A) the number of shares of Common Stock purchased in the Buy-In, times (B) the Closing Sale Price of a share of Common Stock on the Exercise Date. In addition to the foregoing, if the Buyer is any of Ligand, Nomis Bay or Marshman (each, a "**Major Buyer**"), and on or prior to the Required Delivery Date, if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, the Company shall fail to issue and deliver a certificate to a Major Buyer and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, the Transfer Agent shall fail to credit the balance account of such Major Buyer or such Major Buyer's designee with DTC upon receipt of such Buyer's broker request through DTC's DRS/DWAC system for such aggregate number of shares of Common Stock to which such Major Buyer submitted for legend removal by such Major Buyer pursuant to Section 5(d) and, after the occurrence of at least three (3) such Delivery Failures and/or Conversion Failures, as applicable, then, in addition to all other remedies available to such Buyer, the Company shall pay in cash to such Buyer on each day after the Share Delivery Date and during such Delivery Failure an amount equal to 0.5% of the product of (A) the sum of the number of shares of Common Stock not issued to such Major Buyer on or prior to the Required Delivery Date and to which such Major Buyer is entitled, multiplied by (B) the average VWAP of the Common Stock during the period beginning on the delivery by such Major Buyer to the Company of the applicable Conversion Notice and ending on the applicable Share Delivery Date. Nothing shall limit such Buyer's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Delivery Failure, this Section 5(e) shall not apply to the applicable Buyer to the extent the Company has already paid such amounts in full to such Buyer with respect to such Delivery Failure, as applicable, pursuant to the analogous sections of the Certificate of Designation with respect to the Preferred Shares then held by such Buyer, or to the extent the Company has paid cash in lieu of delivering Authorized Failure Shares (as defined in the Certificate of Designation) as set forth in Section 8(b) of the Certificate of Designation.

(f) FAST Compliance. While any Preferred Shares remain outstanding, the Company shall maintain a transfer agent that participates in FAST.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

(a) The obligation of the Company hereunder to issue and sell the Preferred Shares and Warrants to each Buyer at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:(i)

(i) Such Buyer shall have executed each of the other Transaction Documents to which it is a party and delivered the same to the Company.

(ii) Such Buyer and each other Buyer shall have delivered to the Company the Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(g) and, with respect to any Bridge Buyer or Other Bridge Buyer, any amounts then due and payable with respect to any Bridge Notes) for the Preferred Shares and Warrants being purchased by such Buyer at the Closing by wire transfer of immediately available funds in accordance with the Flow of Funds Letter.

(iii) Such Buyer shall have duly executed and delivered to the Company each of the Transaction Documents to which it is a party.

(iv) The representations and warranties of such Buyer shall be true and correct in all material respects as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

(v) All conditions to the closing of the Mergers shall have been satisfied or waived (other than the Closing hereunder and other than those conditions which, by their nature, are to be satisfied at the closing of the transactions contemplated by the Merger Agreement, but subject to the satisfaction of such conditions as of the closing of the transactions contemplated by the Merger Agreement), and the closing of the Mergers shall be set to occur substantially concurrently with the Closing hereunder.

7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.

(a) The obligation of each Buyer hereunder to purchase its Preferred Shares and Warrants at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:(i)

(i) The Company shall have duly executed and delivered to such Buyer each of the Transaction Documents to which it is a party and the Company shall have duly executed and delivered to such Buyer such aggregate number of Preferred Shares as set forth across from such Buyer's name in column (3) of the Schedule of Buyers and such aggregate number of Warrants as set forth across from such Buyer's name in column (4) of the Schedule of Buyers. as being purchased by such Buyer at the Closing pursuant to this Agreement.

(ii) Such Buyer shall have received the opinion of Brownstein Hyatt Farber Schreck, LLP, the Company's counsel as to matters under the laws of the State of Nevada, dated as of the Closing Date, in the form reasonably acceptable to such Buyer.

(iii) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, in the form reasonably acceptable to such Buyer, which instructions shall have been delivered to and acknowledged in writing by the Company's transfer agent.

(iv) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company in its jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Closing Date.

(v) [Reserved].

(vi) The Company shall have delivered to such Buyer a certified copy of the Articles of Incorporation and the Certificate of Designation as certified by the Nevada Secretary of State within ten (10) days of the Closing Date.

(vii) The Company shall have delivered to such Buyer a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Board in a form reasonably acceptable to such Buyer, (ii) the Articles of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at the Closing.

(viii) Each and every representation and warranty of the Company shall be true and correct as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form acceptable to such Buyer.

(ix) The Company shall have delivered to such Buyer a letter from the Company's transfer agent certifying the number of shares of Common Stock outstanding on the Closing Date immediately prior to the Closing.

(x) The Common Stock (A) shall be listed on the Principal Market and (B) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (I) in writing by the SEC or the Principal Market or (II) by falling below the minimum maintenance requirements of the Principal Market.

(xi) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities, including without limitation, those required by the Principal Market, if any.

(xii) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(xiii) Since the date of execution of this Agreement, no event or series of events shall have occurred that reasonably would have or result in a Material Adverse Effect.

(xiv) The Company shall have obtained approval of the Principal Market to list the Conversion Shares and the Warrant Shares.

(xv) All conditions to the closing of the Mergers shall have been satisfied or waived (other than the Closing hereunder and other than those conditions which, by their nature, are to be satisfied at the closing of the transactions contemplated by the Merger Agreement, but subject to the satisfaction of such conditions as of the closing of the transactions contemplated by the Merger Agreement), and the closing of the Mergers shall be set to occur substantially concurrently with the Closing hereunder.

(xvi) Each of the Lock-Up Agreements shall be effective and in full force and effect as of the Closing Date.

(xvii) [Reserved].

(xviii) [Reserved].

(xix) Such Buyer shall have received a letter on the letterhead of the Company, duly executed by the Chief Executive Officer of the Company, setting forth the wire amounts of each Buyer and the wire transfer instructions of the Company (the "**Flow of Funds Letter**").

(xx) The Company shall have delivered to such Buyer the Shareholder Consent.

(xxi) The Company shall have received at Closing at least $57,500,000 (in cash or cancellation of Bridge Notes, as applicable, and inclusive of any expense reimbursement withheld by the Buyers pursuant to Section 4(g)) from Buyers that have executed this Agreement (and/or a joinder to this Agreement).

(xxii) The Company and its Subsidiaries shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

8. TERMINATION.

This Agreement shall terminate and be void and of no further force and effect, and all obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earlier to occur of (a) such date and time that the Merger Agreement is terminated in accordance with its terms, (b) upon the mutual written agreement of the Company and the Buyer, (c) if, on the Closing Date, any of the conditions of Closing set forth in Section 7 have not been satisfied as of the time required hereunder to be so satisfied or waived by the party entitled to grant such waiver and, as a result thereof, the transactions contemplated by this Agreement are not consummated, or (d) if the Closing has not occurred on or before the Outside Date (as defined in the Merger Agreement); provided, however, (i) the right to terminate this Agreement under this Section 8 shall not be available to such Buyer if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of such Buyer's breach of this Agreement and (ii) the abandonment of the sale and purchase of the Preferred Shares and the Warrants shall be applicable only to such Buyer providing such written notice, provided further that no such termination shall affect any obligation of the Company under this Agreement to reimburse such Buyer for the expenses described in Section 4(g) above. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Buyer from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Buyer or to enforce a judgment or other court ruling in favor of such Buyer. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(c) Headings; Gender. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(d) Severability; Maximum Payment Amounts. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company and/or any of its Subsidiaries (as the case may be), or payable to or received by any of the Buyers, under the Transaction Documents (including without limitation, any amounts that would be characterized as "interest" under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to any Buyer, or collection by any Buyer pursuant to the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Buyer, the Company and its Subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Buyer, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Buyer under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by such Buyer under any of the Transaction Documents or related thereto are held to be within the meaning of "interest" or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(e) Entire Agreement; Amendments. This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between the Buyers, the Company, its Subsidiaries, any of their affiliates and Persons acting on their behalf, including, without limitation, any transactions by any Buyer with respect to Common Stock or the Securities, and the other matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Buyer has entered into with, or any instruments any Buyer has received from, the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Buyer in the Company or (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries, or any rights of or benefits to any Buyer or any other Person, in any agreement entered into prior to the date hereof between or among the Company and any of its Subsidiaries and any Buyer, or any instruments any Buyer received from the Company or any of its Subsidiaries prior to the date hereof, and all such agreements and instruments shall continue in full force and effect. Except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Series B Required Holders, and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable; provided that no such amendment shall be effective to the extent that it (A) applies to less than all of the holders of the Securities then outstanding or (B) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). Notwithstanding the foregoing or anything to the contrary set forth herein, the Schedule of Buyers may be amended by the Company as contemplated in Sections 1(b), 1(c) and 1(d) hereof without the consent of any Buyer. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the Series B Required Holders may waive any provision of this Agreement, and any waiver of any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable, provided that no such waiver shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No consideration (other than reimbursement of legal fees) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents, including all holders of the Preferred Shares or all holders of the Warrants (as the case may be). From the date hereof and while any Preferred Shares or Warrants are outstanding, the Company shall not be permitted to receive any consideration from a Buyer or a holder of Preferred Shares or Warrants that is not otherwise contemplated by the Transaction Documents in order to, directly or indirectly, induce the Company or any Subsidiary (i) to treat such Buyer or holder of Preferred Shares or Warrants in a manner that is more favorable than to other similarly situated Buyers or holders of Preferred Shares or Warrants, as applicable, or (ii) to treat any Buyer(s) or holder(s) of Preferred Shares or Warrants in a manner that is less favorable than the Buyer or holder of Preferred Shares or Warrants that is paying such consideration; provided, however, that the determination of whether a Buyer has been treated more or less favorably than another Buyer shall disregard any securities of the Company purchased or sold by any Buyer. The Company has not, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, except for the Bridge Notes, the Company confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to the Company, any Subsidiary or otherwise. As a material inducement for each Buyer to enter into this Agreement, the Company expressly acknowledges and agrees that (x) no due diligence or other investigation or inquiry conducted by a Buyer, any of its advisors or any of its representatives shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (y) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase "except as disclosed in the SEC Documents," nothing contained in any of the SEC Documents shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document. "**Series B Required Holders**" means the holders of a majority of the aggregate Stated Value (as defined in the Certificate of Designation) of the Preferred Shares then held by all Buyers.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The mailing addresses and e-mail addresses for such communications shall be:

If to the Company:

Pelthos Therapeutics Inc.
Attention: Chief Executive Officer; Chief Financial Officer
4020 Stirrup Creek Drive
Suite 110
Durham, NC 27703
Telephone: (919) 908-2400; (919) 908-2422
Attention: Scott M. Plesha, Chief Executive Officer
John M. Gay, Chief Financial Officer
E-Mail: [***]; [***]
[***]

With a copy (for informational purposes only) to:

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Telephone: (617)948-6060; (212) 906-1806
Attention: Peter Handrinos; Leah Sauter
E-Mail: [***]; [***]

If to the Transfer Agent:

Nevada Agency and Transfer Company
50 West Liberty Street, Suite 880
Reno, NV 89501
Telephone: 775.322.0626
Attention: Amanda Cardinalli
E-Mail: [***]

If to a Buyer, to its mailing address and e-mail address set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers,

with a copy (for informational purposes only) to:

Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Telephone: (212) 808-7540
Attention: Michael A. Adelstein, Esq.
E-mail: [***]

and

Paul Hastings LLP
2050 M St NW
Washington, DC 20036
Telephone: (202) 551-1704
Attention: Brad Bondi; Sean Donahue; Andrew Goodman; Will Magioncalda
E-mail: [***];
[***];
[***];
[***]

and

Paragon Biosciences, LLC
330 N. Wabash Ave., Suite 3500
Chicago, IL 60611
Attention: Pat Morris
E-mail: [***]

or to such other mailing address and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change, provided that Kelley Drye & Warren LLP shall only be provided copies of notices sent to their clients as specified on the Schedule of Buyers and Paul Hastings LLP shall only be provided copies of notices sent to Ligand. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date and recipient's e-mail or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of any of the Preferred Shares and the Warrants. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Series B Required Holders, including, without limitation, by way of a Fundamental Transaction (as defined in the Warrants) (unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Warrants) or by way of a Fundamental Transaction (as defined in the Certificate of Designation) (unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Certificate of Designation). No Buyer may assign this Agreement or any rights or obligations hereunder without the prior written consent of the Company prior to the Closing Date; provided, that Marshman's rights and obligations to fund the Purchase Price and purchase Securities on the Closing Date may be reallocated to an Other Bridge Buyer or to the Option Buyer in accordance with Sections 1(b), 1(c) and 1(d) hereof, provided that such Other Bridge Buyer or such other Option Buyer enters into a Joinder. After the Closing Date, a Buyer may assign some or all of its rights hereunder in connection with any transfer of any of its Securities without the consent of the Company, in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive the Closing. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification. In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each holder of any Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary to such Buyer (including representations and warranties incorporated herein by reference) in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary owed to such Buyer contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnitee that arises out of or results from (A) the execution, delivery, performance or enforcement of any of the Transaction Documents, (B) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, or (C) the status of such Buyer or holder of the Securities either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief). To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 9(k) shall be the same as those set forth in Section 6 of the Registration Rights Agreement.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the Common Stock shall be automatically adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions that occur with respect to the Common Stock after the date of this Agreement. Notwithstanding anything in this Agreement to the contrary, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty against, or a prohibition of, any actions with respect to the borrowing of, arrangement to borrow, identification of the availability of, and/or securing of, securities of the Company in order for such Buyer (or its broker or other financial representative) to effect short sales or similar transactions in the future.

(m) Remedies. Each Buyer and in the event of assignment by Buyer of its rights and obligations hereunder, each holder of Securities, shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it or any Subsidiary fails to perform, observe, or discharge any or all of its or such Subsidiary's (as the case may be) obligations under the Transaction Documents, any remedy at law would be inadequate relief to the Buyers. The Company therefore agrees that the Buyers shall be entitled to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).

(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer exercises a right, election, demand or option under a Transaction Document and the Company or any Subsidiary does not timely perform its related obligations within the periods therein provided, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company or such Subsidiary, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside; Currency. To the extent that the Company makes a payment or payments to any Buyer hereunder or pursuant to any of the other Transaction Documents or any of the Buyers enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Judgment Currency.

(i) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Agreement or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 9(p) referred to as the "**Judgment Currency**") an amount due in US Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(1) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(2) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 9(p)(i)(2) being hereinafter referred to as the "**Judgment Conversion Date**").

(ii) If in the case of any proceeding in the court of any jurisdiction referred to in Section 9(p)(i)(2) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(iii) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement or any other Transaction Document.

(q) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under the Transaction Documents are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and the Company acknowledges that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Buyers are in any way acting in concert or as a group or entity, and the Company shall not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Buyers are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Buyer to purchase Securities pursuant to the Transaction Documents has been made by such Buyer independently of any other Buyer. Each Buyer acknowledges that no other Buyer has acted as agent for such Buyer in connection with such Buyer making its investment hereunder and that no other Buyer will be acting as agent of such Buyer in connection with monitoring such Buyer's investment in the Securities or enforcing its rights under the Transaction Documents. The Company and each Buyer confirms that each Buyer has independently participated with the Company in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Securities contemplated hereby was solely in the control of the Company, not the action or decision of any Buyer, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Buyer. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Buyer, solely, and not between the Company, its Subsidiaries and the Buyers collectively and not between and among the Buyers.

[*signature pages follow*]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

COMPANY:

PELTHOS THERAPEUTICS INC.

By: /s/ John M. Gay
Name: John M. Gay
Title: Chief Financial Officer, Treasurer and Secretary

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

BUYER:

[·]

By: _____
Name:
Title:
Maximum Percentage:

SCHEDULE OF BUYERS

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Buyer	**Mailing Address and E-mail Address**	**Number of Preferred Shares**	**Number of Warrants**	**Bridge Note Funded at Signing**	**Bridge Note Funded at Second Signing Date**	**Total Bridge**	**Total Purchase Price**	**New Cash at Closing**	**Legal Representative's Mailing Address and E-mail Address**

Exhibit A
Certificate of Designation

Exhibit B-1
Ligand Lock-Up Agreement

Exhibit B-2
Other Form of Lock-Up Agreement

Exhibit C
Registration Rights Agreement

Exhibit D
Form of Warrant

Exhibit E
Joinder to Securities Purchase Agreement

The undersigned is executing and delivering this Joinder pursuant to the Securities Purchase Agreement dated as of October 30, 2026 (as the same may hereafter be amended, the "**Securities Purchase Agreement**"), among Pelthos Therapeutics Inc., a Nevada corporation (the "**Company**"), and the other persons named as parties therein. Capitalized terms used but not otherwise defined in this Joinder have the meanings ascribed to them in the Securities purchase Agreement.

By executing and delivering this Joinder to the Securities Purchase Agreement, and upon acceptance hereof by the Company upon the execution of a counterpart hereof, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of the Securities Purchase Agreement as an [Other Bridge Buyer][Option Buyer] in the same manner as if the undersigned were an original signatory to the Securities Purchase Agreement, and the undersigned shall have all of the rights and obligations of a Buyer under the Securities Purchase Agreement. The Company is directed to add the undersigned to the Schedule of Buyers attached to the Securities Purchase Agreement.

Accordingly, the undersigned has executed and delivered this Joinder as of the day of _____, 20__.

Print Name of Buyer:

_____

Signature of Buyer:

_____

_____
Name:
Title:
Maximum Percentage: _____

Address:

_____
_____

Agreed and Accepted as of _____, 2026

PELTHOS THERAPEUTICS INC.

By: _____
Name:
Its:

Exhibit 10.2

Final Form

CASTLE CREEK BIOSCIENCES, INC.

SUPPORT AGREEMENT

THIS SUPPORT AGREEMENT (this "Agreement"), dated as of October 30, 2026, is made by and among Pelthos Therapeutics Inc., a Nevada corporation ("Public Company"), Castle Creek Biosciences, Inc., a Delaware corporation (the "Company"), and the undersigned holders (each a "Stockholder") of shares of capital stock (the "Shares") of the Company.

WHEREAS, Public Company, Credit Card Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Public Company ("Merger Sub"), Credit Card Merger Sub II, LLC, a Delaware limited liability company and a wholly-owned subsidiary of Public Company ("Merger Sub II"), and the Company, have entered into an Agreement and Plan of Merger, dated as of even date herewith (the "Merger Agreement"), providing for (i) the merger of Merger Sub with and into the Company, whereby the Company will become a wholly-owned subsidiary of Public Company (the "First Merger"), and (ii) immediately following the First Merger, a merger of the Company with and into Merger Sub II, whereby Merger Sub II will continue as the surviving company and will remain a wholly-owned subsidiary of Public Company (the "Second Merger," and, together with the First Merger, the "Mergers");

WHEREAS, each Stockholder beneficially owns and has sole or shared voting power with respect to the number of Shares, and holds Merger Partner Options and Merger Partner Warrants to acquire the number of Shares, indicated opposite such Stockholder's name on Schedule 1 attached hereto;

WHEREAS, as an inducement and a condition to the willingness of Public Company to enter into the Merger Agreement, each Stockholder has agreed to enter into and perform this Agreement; and

WHEREAS, all capitalized terms used in this Agreement without definition herein shall have the meanings ascribed to them in the Merger Agreement.

NOW, THEREFORE, in consideration of, and as a condition to, Public Company's entering into the Merger Agreement, each Stockholder, Public Company and the Company agree as follows:

1. Agreement to Vote Shares. Each Stockholder agrees that, prior to the Expiration Date (as defined in Section 2 below), at any meeting of the stockholders of the Company or any adjournment or postponement thereof, or in connection with any written consent of the stockholders (or any class or series of stockholders, as applicable) of the Company with respect to the Mergers, the Merger Agreement, or otherwise with respect to any Merger Partner Stockholder Approval or any Acquisition Proposal, such Stockholder shall:

(a) appear at such meeting or otherwise cause the Shares and any New Shares (as defined in Section 3 below) to be counted as present thereat for purposes of calculating a quorum;

(b) from and after the date hereof until the Expiration Date, vote (or cause to be voted), or deliver a written consent (or cause a written consent to be delivered) covering all of the Shares and any New Shares that Stockholder shall be entitled to so vote: (i) in favor of (A) the Merger Partner Stockholder Approvals and all of the matters set forth in the Merger Partner Written Consent, including the adoption of the Merger Agreement and the approval of the First Merger, and (B) any matter that could reasonably be expected to facilitate the Mergers, the Concurrent Financing and the other transactions contemplated by the Merger Agreement; (ii) against any action or agreement that would result in a breach of any representation, warranty, covenant or obligation of the Company in the Merger Agreement; (iii) against any Acquisition Proposal, or any agreement, transaction or other matter or action that is intended to, or would reasonably be expected to, impede, interfere with, delay, postpone, discourage or materially and adversely affect the consummation of the Mergers, the Concurrent Financing or any of the other transactions contemplated by the Merger Agreement; and (iv) to approve any proposal to adjourn or postpone the meeting to a later date, if there are not sufficient votes for the adoption of the Merger Agreement on the date on which such meeting is held. Stockholder shall not take or commit or agree to take any action inconsistent with the foregoing.

2. Expiration Date. As used in this Agreement, the term "Expiration Date" shall mean the earliest to occur of (a) the Initial Effective Time, (b) such date and time as the Merger Agreement shall be terminated pursuant to Article VIII thereof or otherwise, (c) the effectuation of any amendment to the Merger Agreement that (i) materially decreases the amount, or changes the form of consideration payable to all stockholders of the Company pursuant to the terms of the Merger Agreement, (ii) extends the Outside Date past March 31, 2027, or (iii) adds to or expands the obligations or liabilities of Stockholder under the Merger Agreement in any material respect, in each case without the Stockholder's written consent, or (d) the mutual written agreement of the parties to terminate this Agreement.

3. Additional Acquisitions. Each Stockholder agrees that any shares of capital stock or other equity securities of the Company that such Stockholder acquires, or with respect to which such Stockholder otherwise acquires sole or shared voting power (including any proxy) after the execution of this Agreement and prior to the Expiration Date, whether by the exercise of any Merger Partner Options or Merger Partner Warrants or otherwise, including, without limitation, upon the vesting of any applicable restricted stock unit award agreement or by gift, succession, in the event of a stock split or as a dividend or distribution of any Shares ("New Shares"), shall be subject to the terms and conditions of this Agreement to the same extent as if they constituted the Shares as of the date hereof.

4. Agreement to Retain Shares. From and after the date hereof until the Expiration Date, each Stockholder shall not, directly or indirectly, (a) sell, assign, transfer, tender, or otherwise dispose of (including, without limitation, by the creation of any Liens (as defined in Section 5(d) below)) any Shares or any New Shares, (b) deposit any Shares or New Shares into a voting trust or enter into a voting agreement or similar arrangement with respect to such Shares or New Shares or grant any proxy or power of attorney with respect thereto (other than this Agreement), (c) enter into any Contract, option, commitment or other arrangement or understanding with respect to the direct or indirect sale, transfer, assignment or other disposition of (including, without limitation, by the creation of any Liens) any Shares or New Shares, or (d) take any action that would make any representation or warranty of such Stockholder contained herein untrue or incorrect or have the effect of preventing or disabling such Stockholder from performing such Stockholder's obligations under this Agreement. Any action taken in violation of the foregoing sentence shall be null and void *ab initio*. Notwithstanding the foregoing, each Stockholder may make (1) transfers by will or by operation of Law or other transfers for estate-planning purposes, in which case this Agreement shall bind the transferee, (2) with respect to such Stockholder's Merger Partner Options (and any Shares underlying such Merger Partner Options) which expire on or prior to the Expiration Date, transfers, sale, or other disposition of Shares to the Company (or effecting a "net exercise" of a Merger Partner Option) as payment for the (i) exercise price of such Stockholder's Merger Partner Options and (ii) taxes applicable to the exercise of such Stockholder's Merger Partner Options, (3) if Stockholder is an entity, partnership or limited liability company, a transfer to one or more equityholders, partners or members of Stockholder, or to an Affiliated person, corporation, trust or other Entity controlling or under common control with Stockholder, or if Stockholder is a trust, a transfer to a beneficiary, provided that in each such case the applicable transferee has signed a voting agreement in substantially the form hereof, (4) transfers that occur by operation of law pursuant to a qualified domestic relations order or in connection with a divorce settlement, (5) transfers to any other stockholder of the Company who are subject to a support agreement with Merger Partner and Public Company, and (6) transfers, sales or other dispositions as Public Company may otherwise agree in writing in its sole discretion. If any voluntary or involuntary transfer of any Shares covered hereby shall occur (including a transfer or disposition permitted by Section 4(1) through Section 4(6), sale by a Stockholder's trustee in bankruptcy, or a sale to a purchaser at any creditor's or court sale), the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall take and hold such Shares subject to all of the restrictions, liabilities and rights under this Agreement, which shall continue in full force and effect, notwithstanding that such transferee is not a Stockholder and has not executed a counterpart hereof or joinder hereto.

5. Representations and Warranties of Stockholder. Each Stockholder hereby, severally but not jointly, represents and warrants to Public Company and the Company as follows:

(a) If such Stockholder is an Entity: (i) such Stockholder is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated, organized or constituted, (ii) such Stockholder has all necessary power and authority to execute and deliver this Agreement, to perform such Stockholder's obligations hereunder and to consummate the transactions contemplated hereby, and (iii) the execution and delivery of this Agreement, performance of such Stockholder's obligations hereunder and the consummation of the transactions contemplated hereby by such Stockholder have been duly authorized by all necessary action on the part of such Stockholder and no other proceedings on the part of such Stockholder are necessary to authorize this Agreement, or to consummate the transactions contemplated hereby. If such Stockholder is an individual, such Stockholder has the legal capacity to execute and deliver this Agreement, to perform such Stockholder's obligations hereunder and to consummate the transactions contemplated hereby;

(b) this Agreement has been duly executed and delivered by or on behalf of such Stockholder and, to such Stockholder's knowledge and assuming this Agreement constitutes a valid and binding agreement of the Company and Public Company, constitutes a valid and binding agreement with respect to such Stockholder, enforceable against such Stockholder in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of Law or a court of equity and by bankruptcy, insolvency and similar Laws affecting creditors' rights and remedies generally;

(c) Stockholder has had the opportunity to review the Merger Agreement, including the provisions relating to the payment and allocation of the consideration to be paid to the stockholders of the Company, and this Agreement with counsel of Stockholder's own choosing. Stockholder has had an opportunity to review with its own tax advisors the tax consequences of the Mergers, the Concurrent Financing and the other transactions contemplated by the Merger Agreement. Stockholder understands that it must rely solely on its advisors and not on any statements or representations made by Public Company, the Company or any of their respective agents or representatives. Stockholder understands that such Stockholder (and not Public Company, the Company, the Surviving Corporation, or the Surviving Company) shall be responsible for such Stockholder's tax liability that may arise as a result of the Mergers or the transactions contemplated by the Merger Agreement. Stockholder understands and acknowledges that the Company, Public Company, Merger Sub, and Merger Sub II are entering into the Merger Agreement in reliance upon Stockholder's execution, delivery and performance of this Agreement;

(d) such Stockholder beneficially owns the number of Shares, and holds Merger Partner Options and Merger Partner Warrants (as applicable) to acquire the number of Shares, indicated opposite such Stockholder's name on Schedule 1, which constitute all of the Shares owned by the Stockholder as of the date hereof. Such Stockholder will own any New Shares, free and clear of any liens, claims, charges or other encumbrances or restrictions of any kind whatsoever ("Liens"), and has or will have sole or shared, and otherwise unrestricted, voting power with respect to such Shares or New Shares and none of the Shares or New Shares is or will be subject to any voting trust or other agreement, arrangement or restriction with respect to the voting of the Shares or the New Shares, except as contemplated by this Agreement and the stockholder agreements and arrangements referenced in the Merger Agreement and except for customary arrangements with the Stockholder's prime broker and/or custodian;

(e) to the knowledge of such Stockholder, the execution and delivery of this Agreement by such Stockholder does not, and the performance by such Stockholder of his, her or its obligations hereunder and the compliance by such Stockholder with any provisions hereof will not, violate or conflict with, result in a material breach of or constitute a default (or an event that with notice or lapse of time or both would become a material default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Liens on any Shares or New Shares pursuant to, any agreement, instrument, note, bond, mortgage, Contract, lease, license, permit or other obligation or any order, arbitration award, judgment or decree to which such Stockholder is a party or by which such Stockholder is bound, or any Law, statute, rule or regulation to which such Stockholder is subject or, in the event that such Stockholder is a corporation, partnership, trust or other Entity, any bylaw or other Organizational Document of such Stockholder; except for any of the foregoing as would not reasonably be expected to prevent or delay the performance by such Stockholder of his, her or its obligations under this Agreement in any material respect;

(f) the execution and delivery of this Agreement by such Stockholder does not, and the performance of this Agreement by such Stockholder does not and will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or regulatory authority by such Stockholder except for applicable requirements, if any, of the Securities Act or the Exchange Act, and except where the failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, would not prevent or delay the performance by such Stockholder of his, her or its obligations under this Agreement in any material respect;

(g) no investment banker, broker, finder or other intermediary is entitled to a fee or commission from Public Company or the Company in respect of this Agreement based upon any Contract made by or on behalf of such Stockholder; and

(h) as of the date of this Agreement, there is no Action pending or, to the knowledge of such Stockholder, threatened against such Stockholder that would reasonably be expected to prevent or delay the performance by such Stockholder of his, her or its obligations under this Agreement in any material respect.

6. Irrevocable Proxy. Subject to the penultimate sentence of this Section 6, by execution of this Agreement, each Stockholder does hereby appoint Public Company and any of its designees with full power of substitution and resubstitution, as such Stockholder's true and lawful attorney and irrevocable proxy, to the fullest extent of such Stockholder's rights with respect to the Shares, to vote and exercise all voting and related rights, including the right to sign such Stockholder's name (solely in its capacity as a stockholder) to any Stockholder consent, if such Stockholder fails to vote his, her or its Shares solely with respect to the matters set forth in Section 1 hereof by 5:00 p.m. (Eastern Time) on the day immediately preceding the meeting date (or date upon which written consents are requested to be submitted), provided the Stockholder has received information regarding the meeting or request for written consent at least one (1) Business Day before such stockholder meeting or any consent solicitation or other vote taken of the Company's stockholders. Each Stockholder intends this proxy to be irrevocable and coupled with an interest hereunder until the Expiration Date, hereby revokes any proxy previously granted by such Stockholder with respect to the Shares and represents that none of such previously-granted proxies are irrevocable. The Stockholder hereby affirms that the proxy set forth in this Section 6 is given in connection with, and granted in consideration of, and as an inducement to the Company, Public Company, Merger Sub, and Merger Sub II to enter into the Merger Agreement and that such proxy is given to secure the obligations of the Stockholder under Section 1. The irrevocable proxy and power of attorney granted herein shall survive the death or incapacity of such Stockholder and the obligations of such Stockholder shall be binding on such Stockholder's heirs, personal representatives, successors, transferees and assigns. Each Stockholder hereby agrees not to grant any subsequent powers of attorney or proxies with respect to any Shares with respect to the matters set forth in Section 1 until after the Expiration Date. With respect to any Shares that are owned beneficially by Stockholder but are not held of record by Stockholder (other than shares beneficially owned by Stockholder that are held in the name of a bank, broker or nominee), Stockholder shall take all action necessary to cause the record holder of such Shares to grant the irrevocable proxy and take all other actions provided for in this Section 6 with respect to such Shares. Notwithstanding anything contained herein to the contrary, this irrevocable proxy shall automatically terminate upon the Expiration Date. Notwithstanding anything contained herein to the contrary, no proxy granted hereunder may be exercised at any time following a Merger Partner Board Recommendation Change.

7. Waiver of Appraisal Rights. Each Stockholder hereby waives, and agrees not to exercise or assert, any appraisal rights under applicable Law, including Section 262 of the DGCL, in connection with the Mergers.

8. Letter of Transmittal. Each Stockholder acknowledges and agrees that (a) such Stockholder shall not be entitled to receive the shares of Public Company Common Stock or other consideration to which such Stockholder is entitled pursuant to the Merger Agreement until such Stockholder has delivered a duly executed and properly completed Letter of Transmittal to the Exchange Agent, and (b) by executing and delivering the Letter of Transmittal, such Stockholder shall be deemed to have adopted the Merger Agreement and agreed to be bound by the terms thereof, including the indemnification obligations set forth in Article X of the Merger Agreement.

9. No Legal Actions. Each Stockholder hereby agrees that it shall not bring, commence, institute, maintain, prosecute or voluntarily aid any Action which (i) challenges the validity or seeks to enjoin the operation of any provision of this Agreement or (ii) alleges that the execution and delivery of this Agreement by such Stockholder, either alone or together with the other voting agreements and proxies to be delivered in connection with the execution of the Merger Agreement, or the approval of the Merger Agreement and the transactions contemplated thereby by the Merger Partner Board, constitutes a breach of any fiduciary duty of the Merger Partner Board or any member thereof; *provided* that (x) Stockholder may defend against, contest or settle any Action brought against Stockholder that relates solely to Stockholder's capacity as a director, officer or securityholder of the Company, and (y) nothing in this Section 9 shall be deemed to waive, or prevent Stockholder from enforcing, Stockholder's rights under this Agreement or any other agreement to which Stockholder is a party, including Stockholder's right to receive the consideration payable to Stockholder pursuant to the terms of the Merger Agreement.

10. Other Remedies; Specific Performance. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with, and not exclusive of, any other remedy conferred hereby, or by Law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof without the need of posting bond in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at Law or in equity.

11. No Agreement as a Director, Officer, Trustee or Fiduciary. Stockholder has entered into this Agreement solely in Stockholder's capacity as the owner of the Shares (and not in any other capacity, including any capacity as a director or officer of the Company or the Company's Subsidiary). Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall (or require Stockholder to attempt to) limit or restrict a director and/or officer of the Company or the Company's Subsidiary in the exercise of his or her fiduciary duties as a director and/or officer of the Company or the Company's Subsidiary or in his or her capacity as a trustee or fiduciary of any employee benefit plan or trust or prevent or be construed to create any obligation on the part of any director and/or officer of the Company or the Company's Subsidiary or any trustee or fiduciary of any employee benefit plan or trust from taking any action in his or her capacity as such director, officer, trustee and/or fiduciary. For the avoidance of doubt, any actions taken by a Stockholder who is also a director or officer of the Company or the Company's Subsidiary in such director's or officer's capacity as a director or officer shall not relieve such Stockholder of any of its obligations hereunder solely in its separate capacity as a Stockholder, including such Stockholder's voting obligations under Section 1 hereof.

12. Merger Agreement Compliance. Subject in all cases to Section 11, until the earlier of the Initial Effective Time and the date the Merger Agreement is validly terminated in accordance with its terms, each Stockholder agrees that such Stockholder will not, and will cause such Stockholder's controlled affiliates not to, and will use reasonable best efforts to cause such Stockholder's Representatives acting on such Stockholder's behalf not to, directly or indirectly, take any action that would constitute a breach of Section 6.1 of the Merger Agreement (without giving effect to any amendment or modification thereto after the date hereof) to the extent that Merger Partner, the Merger Partner Subsidiary or their respective Representatives are prohibited from taking such action pursuant to Section 6.1 of the Merger Agreement.

13. No Ownership Interest. Nothing contained in this Agreement shall be deemed to vest in Public Company any direct or indirect ownership or incidence of ownership of or with respect to any Shares. All rights, ownership and economic benefits of and relating to the Shares shall remain vested in and belong to such Stockholder, and Public Company does not have authority to manage, direct, superintend, restrict, regulate, govern, or administer any of the policies or operations of the Company or exercise any power or authority to direct such Stockholder in the voting of any of the Shares, except as otherwise provided herein.

14. Termination. This Agreement shall terminate and shall have no further force or effect as of the Expiration Date. Notwithstanding the foregoing, upon termination or expiration of this Agreement, no party shall have any further obligations or liabilities under this Agreement; *provided*, *however*, that nothing set forth in this Section 14 or elsewhere in this Agreement shall relieve any party from liability for any fraud or for any willful and material breach of this Agreement prior to termination hereof.

15. Effect of Merger Partner Board Recommendation Change.

(a) If at any time prior to the Expiration Date the Merger Partner Board makes a Merger Partner Board Recommendation Change, then the obligations, covenants and restrictions of each Stockholder set forth in Section 1 shall be limited to that number of Shares and New Shares held by such Stockholder representing 50% of the total voting power of all Shares and New Shares held by such Stockholder (on an as-converted to common stock basis) (such Shares, the "Covered Shares"), which Covered Shares shall continue to be voted in accordance with Section 1, and such Stockholder shall be permitted to vote its Shares and New Shares that are not Covered Shares in its discretion, subject to Section 15(b); *provided* that in no event shall any such Shares or New Shares be voted in favor of any Acquisition Proposal.

(b) Notwithstanding Section 2 or any termination of this Agreement, if the Merger Agreement is validly terminated (i) pursuant to Section 8.1(e) of the Merger Agreement, (ii) pursuant to Section 8.1(i) of the Merger Agreement or (iii) pursuant to Section 8.1(b) of the Merger Agreement or Section 8.1(g) of the Merger Agreement at a time when Public Company has the right to terminate the Merger Agreement pursuant to Section 8.1(e) of the Merger Agreement or Section 8.1(i) of the Merger Agreement, then each Stockholder agrees that:

(1) for a period of twelve (12) months following such termination of the Merger Agreement, at any meeting of the stockholders of the Company or any adjournment or postponement thereof, or in connection with any written consent of the stockholders (or any class or series of stockholders, as applicable) of the Company with respect to any Acquisition Proposal which was presented to the Company prior to termination of this Agreement, such Stockholder shall (x) appear at such meeting or otherwise cause the Shares and any New Shares to be counted as present thereat for purposes of calculating a quorum and (y) vote (or cause to be voted), or deliver a written consent (or cause a written consent to be delivered) covering all of the Shares and any New Shares that such Stockholder shall be entitled to so vote, against any such Acquisition Proposal, and such Stockholder shall not vote in favor of, consent to, tender or exchange any Shares or New Shares into, or otherwise support any such Acquisition Proposal. Such Stockholder shall not take or commit or agree to take any action inconsistent with the foregoing. This Section 15(b) shall survive any termination of this Agreement until the expiration of such twelve (12) month period; and

(2) for a period of six (6) months following such termination of the Merger Agreement, at any meeting of the stockholders of the Company or any adjournment or postponement thereof, or in connection with any written consent of the stockholders (or any class or series of stockholders, as applicable) of the Company with respect to any Acquisition Proposal, such Stockholder shall (x) appear at such meeting or otherwise cause the Shares and any New Shares to be counted as present thereat for purposes of calculating a quorum and (y) vote (or cause to be voted), or deliver a written consent (or cause a written consent to be delivered) covering all of the Shares and any New Shares that such Stockholder shall be entitled to so vote, against any such Acquisition Proposal, and such Stockholder shall not vote in favor of, consent to, tender or exchange any Shares or New Shares into, or otherwise support any such Acquisition Proposal. Such Stockholder shall not take or commit or agree to take any action inconsistent with the foregoing. This Section 15(b) shall survive any termination of this Agreement until the expiration of such six (6) month period.

16. Further Assurances. Each Stockholder shall, from time to time, execute and deliver, or cause to be executed and delivered, such additional or further consents, documents and other instruments as Public Company or the Company may reasonably request for the purpose of effectively carrying out such Stockholder's obligations under this Agreement.

17. Disclosure. Each Stockholder hereby agrees that Public Company and the Company may publish and disclose in the Information Statement, the Form S-4, any prospectus filed with any regulatory authority in connection with the transactions contemplated by the Merger Agreement and any related documents required to be filed with such regulatory authority and as otherwise required by Law, such Stockholder's identity and ownership of Shares, Merger Partner Options and Merger Partner Warrants and the nature of such Stockholder's commitments, arrangements and understandings under this Agreement and may further file this Agreement as an exhibit to the Information Statement, the Form S-4 or prospectus or in any other filing made by Public Company or the Company as required by Law or the terms of the Merger Agreement, including with the SEC or other regulatory authority, relating to the transactions contemplated by the Merger Agreement, all subject to prior review and a reasonable opportunity to comment by Stockholder's counsel. Prior to the Closing, each Stockholder shall not, and shall use its reasonable best efforts to cause its representatives not to, directly or indirectly, make any press release, public announcement or other public communication regarding the Mergers without the prior written consent of Public Company and the Company, *provided* that the foregoing shall not limit or affect any actions taken by such Stockholder (or any affiliated officer or director of such Stockholder) that would be permitted to be taken by such Stockholder, Public Company or the Company pursuant to the Merger Agreement; *provided*, *further*, that the foregoing shall not affect any actions of Stockholder the prohibition of which would be prohibited under applicable Law and shall not prohibit Stockholder or its affiliates from making any publicly-available filings required by applicable law, regulation or legal process.

18. Notice. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or sent by overnight courier (providing proof of delivery), by facsimile transmission (providing confirmation of transmission) or by electronic transmission (provided that no "bounce back" or similar message of non-delivery is received with respect thereto) to the Company or Public Company, as the case may be, in accordance with Section 11.1 of the Merger Agreement and to each Stockholder at his, her or its address or email address (providing confirmation of transmission) set forth on Schedule 1 attached hereto (or at such other address for a party as shall be specified by like notice).

19. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

20. Assignability; No Third-Party Beneficiaries. No party may assign any of its rights or delegate any of its performance obligations under this Agreement, in whole or in part, by operation of law or otherwise without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment of rights or delegation of performance obligations in violation of this Section is void. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

21. No Waivers. No waivers of any breach of this Agreement extended by Public Company or the Company to such Stockholder shall be construed as a waiver of any rights or remedies of Public Company or the Company, as applicable, with respect to any other stockholder of the Company who has executed an agreement substantially in the form of this Agreement with respect to Shares held or subsequently held by such stockholder or with respect to any subsequent breach of Stockholder or any other such stockholder of the Company. No waiver of any provisions hereof by any party shall be deemed a waiver of any other provisions hereof by any such party, nor shall any such waiver be deemed a continuing waiver of any provision hereof by such party.

22. Applicable Law; Jurisdiction. This Agreement and all matters, claims, counterclaims, or causes of action (whether in contract, tort, statute, or otherwise) arising out of or relating to this Agreement and the transactions contemplated hereby (including its interpretation, construction, performance and enforcement), or the actions of any party in the negotiation, administration, performance, or enforcement of this Agreement shall be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of Law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdictions other than those of the State of Delaware. Each of the parties to this Agreement (i) consents to submit itself to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, New Castle County, or, if that court does not have jurisdiction, a state or federal court sitting in Wilmington, Delaware in any action or proceeding arising out of or relating to this Agreement, (ii) agrees that all claims in respect of such action or proceeding shall be heard and determined in any such court, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (iv) agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the parties hereto waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto. Any party may make service on another party by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 18. Nothing in this Section, however, shall affect the right of any party to serve legal process in any other manner permitted by Law.

23. WAIVER OF JURY TRIAL. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY RELEVANT MATTER. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY OTHER PARTY HERETO WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND EACH OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

24. No Agreement Until Executed. Irrespective of negotiations among the parties or the exchanging of drafts of this Agreement, this Agreement shall not constitute or be deemed to evidence a Contract, agreement, arrangement or understanding between the parties hereto unless and until (a) the Merger Partner Board has approved, for purposes of any applicable anti-takeover Laws and regulations and any applicable provision of the Governing Documents of the Company, the Merger Agreement and the transactions contemplated thereby, (b) the Merger Agreement is executed by all parties thereto, and (c) this Agreement is executed by all parties hereto.

25. Entire Agreement; Counterparts; Exchanges by Electronic Transmission. This Agreement constitutes the entire agreement among the parties to this Agreement and supersedes any prior understandings, agreements or representations by or among the parties hereto, or any of them, written or oral, with respect to the subject matter hereof and the parties hereto expressly disclaim reliance on any such prior understandings, agreements or representations to the extent not embodied in this Agreement. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by all parties by electronic transmission via ".pdf" shall be sufficient to bind the parties to the terms and conditions of this Agreement.

26. Amendment. This Agreement may not be amended, supplemented or modified, and no provisions hereof may be modified or waived, except by an instrument in writing signed on behalf of each party hereto.

27. Fees and Expenses. Except as otherwise specifically provided herein, in the Merger Agreement or in any other agreement contemplated by the Merger Agreement to which a party hereto is a party, each party hereto shall bear its own expenses in connection with this Agreement and the transactions contemplated hereby.

28. Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the parties. Each of the parties hereby acknowledges, represents and warrants that (i) it has read and fully understood (x) the Merger Agreement, including the provisions relating to the payment and allocation of the consideration to be paid to stockholders of the Company and holders of Merger Partner Options and Merger Partner Warrants, (y) this Agreement, and (z) the implications and consequences thereof; (ii) it has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of its own choice, or it has made a voluntary and informed decision to decline to seek such counsel; and (iii) it is fully aware of the legal and binding effect of this Agreement.

29. Definition of Merger Agreement. For purposes of this Agreement, the term "Merger Agreement" may include such agreement as amended or modified as long as such amendments or modifications (a) do not (i) change the form or amount of consideration payable, or terms of payment or issuance, under the Merger Agreement, (ii) extend the Outside Date past March 31, 2027, or (iii) otherwise change the terms and conditions of the Mergers, the Concurrent Financing or the other transactions contemplated by the Merger Agreement in a manner materially adverse to such Stockholder or (b) have been agreed to in writing by such Stockholder.

30. Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

(d) Except as otherwise indicated, all references in this Agreement to "Sections," and "Schedules" are intended to refer to Sections of this Agreement and Schedules to this Agreement, respectively.

(e) The underlined headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

[*Remainder of Page has Intentionally Been Left Blank*]

EXECUTED as of the date first above written.

STOCKHOLDER:

[NAME]

By:
Name: _____
Title: _____

Signature Page to Castle Creek Support Agreement

EXECUTED as of the date first above written.

PUBLIC COMPANY:

PELTHOS THERAPEUTICS INC.

By: _____
Name: _____
Title: _____

EXECUTED as of the date first above written.

COMPANY:

CASTLE CREEK BIOSCIENCES, INC.

By: _____
Name: _____
Title: _____

Signature Page to Castle Creek Support Agreement

SCHEDULE 1

Name, Address and Email Address of Stockholder	Shares of Merger Partner Common Stock	Shares of Merger Partner Preferred Stock (by class and series)	Merger Partner Options	Merger Partner Warrants

Signature Page to Castle Creek Support Agreement

Exhibit 10.3

Final Form

LOCK-UP AGREEMENT

October 30, 2026

Pelthos Therapeutics Inc.
4020 Stirrup Creek Drive, Suite 110
Durham, NC 27703

Castle Creek Biosciences, Inc.
330 N. Wabash Ave.
Suite 3500
Chicago, IL 60611

Ladies and Gentlemen:

The undersigned signatory of this lock-up agreement (this "***Lock-Up Agreement***") understands that Pelthos Therapeutics Inc., a Nevada corporation (including any successor thereto, "***Public Company***"), has entered into an Agreement and Plan of Merger, dated as of October 30, 2026 (as the same may be amended from time to time, the "***Merger Agreement***") with Credit Card Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Public Company, Credit Card Merger Sub II, LLC, a Delaware limited liability company and a wholly-owned subsidiary of Public Company, and Castle Creek Biosciences, Inc., a Delaware corporation ("***Merger Partner***"), and Paragon Biosciences, LLC, a Delaware limited liability company, solely in its capacity as the Securityholder Representative). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement.

As a condition and inducement to each of the parties to enter into the Merger Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby irrevocably agrees that, subject to the exceptions set forth herein, without the prior written consent of Public Company and, solely prior to the Closing, Merger Partner, the undersigned will not, during the period commencing upon the Closing and ending on the date that is 180 days after the Closing Date (the "***Restricted Period***"):

(i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Merger Partner Merger Shares issued to the undersigned or any of its controlled Affiliates pursuant to the Merger Agreement, or any securities convertible into or exercisable or exchangeable for such Merger Partner Merger Shares that are issued to the undersigned or any of its controlled Affiliates in respect of such Merger Partner Merger Shares (collectively, the "***Undersigned's Shares***"), or publicly disclose the intention to make any such offer, sale, pledge, grant, transfer or disposition;

(ii) enter into any swap, short sale, hedge or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned's Shares regardless of whether any such transaction described in clause (i) above or this clause (ii) is to be settled by delivery of Public Company Common Stock, or other securities, in cash or otherwise; or

(iii) make any demand for, or exercise any right with respect to, the registration of any of the Undersigned's Shares.

The restrictions and obligations contemplated by this Lock-Up Agreement shall not apply to:

(a) transfers of the Undersigned's Shares:

(i) if the undersigned is a natural person, (A) to any person related to the undersigned by blood or adoption who is an immediate family member of the undersigned, or by marriage or domestic partnership (a "***Family Member***"), or to a trust formed for the direct or indirect benefit of the undersigned or any of the undersigned's Family Members, (B) to the undersigned's estate, following the death of the undersigned, by will, intestacy or other operation of Law, (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) by operation of Law pursuant to a qualified domestic relations order or in connection with a divorce settlement, or (E) to any partnership, corporation or limited liability company which is controlled by the undersigned and/or by any such Family Member(s);

(ii) if the undersigned is a corporation, partnership, limited liability company or other entity, (A) to another corporation, partnership, limited liability company, or other entity that is an affiliate (as defined under Rule 12b-2 of the Exchange Act) of the undersigned, including investment funds or other entities under common control or management or advisement with the undersigned (including, for the avoidance of doubt, where the undersigned is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), (B) as a distribution or dividend to equity holders, including, without limitation, current or former general or limited partners, members or managers (or to the estates of any of the foregoing), as applicable, of the undersigned (including upon the liquidation and dissolution of the undersigned pursuant to a plan of liquidation approved by the undersigned's equity holders), (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) transfers or dispositions not involving a change in beneficial ownership or (E) with prior written consent of Public Company; or

(iii) if the undersigned is a trust, to any grantors or beneficiaries of the trust;

provided that, in the case of any transfer or distribution pursuant to this clause (a), such transfer is not for value and each donee, heir, beneficiary or other transferee or distributee shall, prior to or concurrently with such transfer or distribution, sign and deliver to Public Company a lock-up agreement in the form of this Lock-Up Agreement with respect to the Undersigned's Shares that have been so transferred or distributed;

(b) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act (a "***10b5-1 Plan***") for the transfer of Public Company Common Stock; *provided that* (i) such plan does not provide for any transfers of the Undersigned's Shares during the Restricted Period and (ii) no sales, transfers or other dispositions of the Undersigned's Shares shall be made pursuant to a 10b5-1 Plan existing as of the date of the Merger Agreement (which, for clarity, shall not be amended during the Restricted Period to provide for the transfer of the Undersigned's Shares during the Restricted Period, but may be terminated during the Restricted Period); and *provided further* that no public announcement or filing under the Exchange Act or otherwise shall be required or voluntarily made by any party in connection with the establishment of such plan during the Restricted Period;

(c) transfers, sales, dispositions, or the entering into of transactions (including, without limitation, any swap, hedge or similar agreement) by the undersigned of or relating to shares of capital stock or other securities of Public Company purchased or acquired by the undersigned on the open market following the Closing or in a public offering by Public Company following the Closing; *provided that* this clause (c) shall not apply to any of the Undersigned's Shares;

(d) transfers of the Undersigned's Shares pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction made to all holders of Public Company's capital stock involving a change of control of Public Company that has been approved by Public Company's Board of Directors, *provided that* in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Undersigned's Shares shall remain subject to the restrictions contained in this Lock-Up Agreement. For purposes of this clause (d), a "***change of control***" means the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons, of Public Company's voting securities if, after such transfer, Public Company's stockholders as of immediately prior to such transfer do not hold a majority of the outstanding voting securities of Public Company (or the surviving entity);

(e) transfers of the Undersigned's Shares pursuant to an order of a court or regulatory agency; or

(f) the pledge, grant of a security interest in, or collateral assignment of the Undersigned's Shares under any bona fide credit facility or similar facility maintained by the undersigned or one of its controlled affiliates; *provided that* no such pledge, grant or collateral assignment shall (i) confer upon such pledgee, grantee or assignee any right or claim against Public Company, the Surviving Company or any of their respective Affiliates, (ii) make such pledgee, grantee or assignee a party to, or a third-party beneficiary of, this Lock-Up Agreement, or (iii) entitle such pledgee, grantee or assignee to any notice, information, audit, dispute or enforcement right hereunder or under the Merger Agreement; *provided, further that* (x) as a condition to such pledge, grant or collateral assignment, the undersigned must continue to exercise voting control over the Undersigned's Shares which are pledged, granted or collaterally assigned and (y) a foreclosure on the Undersigned's Shares or similar action by the pledgee, grantee or assignee shall constitute a breach of this Lock-Up Agreement unless such foreclosure or other action otherwise qualifies as a transfer permitted by this Lock-Up Agreement;

and *provided, further*, that if, at any time during the Restricted Period, Public Company releases or waives, or agrees to release or waive, any of the restrictions set forth in this Lock-Up Agreement (or a substantially similar lock-up agreement) with respect to any other Person that is a Participating Securityholder of Merger Partner immediately prior to the Closing, on terms more favorable to such other Person than the terms set forth herein (including, without limitation, an earlier release date, a shorter Restricted Period, or a more permissive exception), then the same more favorable terms shall automatically apply to the undersigned, *mutatis mutandis*, and Public Company shall promptly notify the undersigned of any such release or waiver; and *provided, further*, that, with respect to each of (a) and (b) above, no filing by any party (including any donor, donee, transferor, transferee, distributor or distributee) under Section 16 of the Exchange Act or other public announcement shall be made voluntarily in connection with such transfer or disposition of the Undersigned's Shares during the Restricted Period; and *provided, further*, that (i) any filing under Section 16 of the Exchange Act made during the Restricted Period shall clearly indicate in the footnotes thereto that such filing relates to the circumstances described in (a) or (b), as applicable, and that the Undersigned's Shares subject thereto remain subject to this Lock-Up Agreement and (ii) the foregoing shall not prevent the undersigned from filing a Form 13F, Schedule 13G or Schedule 13D, or any amendment thereto, or from disclosing its holdings in Public Company to the extent required by applicable Law.

Any attempted transfer in violation of this Lock-Up Agreement will be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the transfer restrictions set forth in this Lock-Up Agreement and will not be recorded on the share register of Public Company. In furtherance of the foregoing, the undersigned agrees that Public Company and any duly appointed transfer agent for the registration or transfer of the Undersigned's Shares are hereby authorized to decline to make any transfer of the Undersigned's Shares if such transfer would constitute a violation or breach of this Lock-Up Agreement. Public Company may cause the legend set forth below, or a legend substantially equivalent thereto, to be placed upon any certificate(s) or other documents, ledgers or instruments evidencing the undersigned's ownership of the Undersigned's Shares:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AND MAY ONLY BE TRANSFERRED IN COMPLIANCE WITH A LOCK-UP AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF PELTHOS THERAPEUTICS INC.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement and to perform its obligations hereunder, including with respect to covenants and obligations that may bind the undersigned's controlled Affiliates. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that Public Company and Merger Partner are proceeding with the Mergers in reliance upon this Lock-Up Agreement. Notwithstanding anything to the contrary contained herein, this Lock-Up Agreement will automatically terminate and the undersigned shall be released from all obligations under this Lock-Up Agreement upon the valid termination of the Merger Agreement.

Any and all remedies herein expressly conferred upon Public Company or Merger Partner will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity, and the exercise by Public Company or Merger Partner of any one remedy will not preclude the exercise of any other remedy. The undersigned agrees that irreparable damage, for which monetary damages, even if available, would not be an adequate remedy, would occur to Public Company and/or Merger Partner in the event that any provision of this Lock-Up Agreement were not performed by the undersigned or its controlled Affiliate, if applicable, in accordance with its specific terms or were otherwise breached. It is accordingly agreed that Public Company and Merger Partner shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent breaches of this Lock-Up Agreement and to enforce specifically the terms and provisions hereof (without any requirement to post any bond or other security in connection with seeking such relief) in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Public Company or Merger Partner is entitled at law or in equity. The undersigned further agrees that it will not oppose the granting of an injunction, specific performance or other equitable relief on the basis that Public Company or Merger Partner has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity.

Upon the release of any of the Undersigned's Shares from this Lock-Up Agreement, Public Company will cooperate with the undersigned to facilitate the timely preparation and delivery of certificates representing the Undersigned's Shares without the restrictive legend above or the withdrawal of any stop transfer instructions.

This Lock-Up Agreement and any claim, controversy or dispute arising under or related to this Lock-Up Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware without giving effect to any choice or conflict of Law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Delaware.

IN ANY ACTION OR PROCEEDING BETWEEN THE UNDERSIGNED, ON THE ONE HAND, AND PUBLIC COMPANY, MERGER PARTNER OR ANY OF THEIR SUBSIDIARIES, ON THE OTHER HAND, ARISING OUT OF OR RELATING TO THIS LOCK-UP AGREEMENT, EACH OF THE UNDERSIGNED, PUBLIC COMPANY AND MERGER PARTNER: (A) CONSENTS TO SUBMIT ITSELF TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE, NEW CASTLE COUNTY, OR, IF THAT COURT DOES NOT HAVE JURISDICTION, A STATE OR FEDERAL COURT SITTING IN WILMINGTON, DELAWARE, (B) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN ANY SUCH COURT, (C) AGREES THAT IT SHALL NOT ATTEMPT TO DENY OR DEFEAT SUCH PERSONAL JURISDICTION BY MOTION OR OTHER REQUEST FOR LEAVE FROM ANY SUCH COURT, (D) AGREES NOT TO BRING ANY SUCH ACTION OR PROCEEDING IN ANY OTHER COURT, (E) WAIVES ANY DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY ACTION OR PROCEEDING SO BROUGHT AND WAIVES ANY BOND, SURETY OR OTHER SECURITY THAT MIGHT BE REQUIRED OF ANY OTHER PARTY WITH RESPECT THERETO, AND (F) AGREES THAT IF NOTICE IS GIVEN IN WRITING, WITH RESPECT TO THE UNDERSIGNED, TO THE ADDRESS OF THE UNDERSIGNED SET FORTH ON THE SIGNATURE PAGES HERETO, AND WITH RESPECT TO PUBLIC COMPANY OR MERGER PARTNER, TO THE ADDRESS SET FORTH ABOVE, SERVICE OF PROCESS UPON SUCH PARTY IN ANY SUCH ACTION OR PROCEEDING SHALL BE EFFECTIVE (I) THREE (3) BUSINESS DAYS AFTER BEING SENT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, (II) ONE (1) BUSINESS DAY AFTER BEING SENT FOR NEXT BUSINESS DAY DELIVERY, FEES PREPAID, VIA A REPUTABLE OVERNIGHT COURIER SERVICE, (III) ON THE DATE TRANSMITTED BY E-MAIL (PROVIDED THAT NO "BOUNCE BACK" OR SIMILAR MESSAGE OF NON-DELIVERY IS RECEIVED WITH RESPECT THERETO), OR (IV) ON THE DATE PERSONALLY DELIVERED TO AN AUTHORIZED OFFICER OF THE PARTY TO WHICH SENT. EACH OF PUBLIC COMPANY, MERGER PARTNER AND THE UNDERSIGNED HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY RELEVANT MATTER. EACH OF PUBLIC COMPANY, MERGER PARTNER AND THE UNDERSIGNED (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY HERETO WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS LOCK-UP AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

This Lock-Up Agreement may be executed in two or more counterparts (including by facsimile or by an electronic scan delivered by electronic mail), each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. To the extent signed and delivered by means of a facsimile machine, by email delivery of a ".pdf" or ".jpg" format data file or by any electronic signature complying with the U.S. federal ESIGN Act of 2000, this Lock-Up Agreement shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine, email delivery of a ".pdf" or ".jpg" format data file or electronic signature complying with the U.S. federal ESIGN Act of 2000 to deliver a signature to this Lock-Up Agreement or any amendment hereto or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine, email delivery of a ".pdf" or ".jpg" format data file or by any electronic signature complying with the U.S. federal ESIGN Act of 2000 as a defense to the formation of a contract and each party hereto forever waives any such defense.

(Signature Page Follows)

Print Name of Merger Partner stockholder: [_____]

Signature (for individuals):

_____

Signature (for entities):

By: _____

Name: _____

Title: _____

[Signature Page to Lock-Up Agreement – Participating Securityholders]

Accepted and Agreed by:
Pelthos Therapeutics Inc.:

By: _____

Name: _____

Title: _____

[Signature Page to Lock-Up Agreement – Participating Securityholders]

Accepted and Agreed by:
Castle Creek Biosciences, Inc.:

By: _____

Name: _____

Title: _____

[Signature Page to Lock-Up Agreement – Participating Securityholders]

Exhibit 10.4

FORM OF LOCK-UP AGREEMENT

October 30, 2026

Pelthos Therapeutics Inc.
4020 Stirrup Creek Drive, Suite 110
Durham, NC 27703

Ladies and Gentlemen:

The undersigned signatory of this lock-up agreement (this "***Lock-Up Agreement***") understands that Pelthos Therapeutics Inc., a Nevada corporation (including any successor thereto, the "***Company***"), has entered into a Securities Purchase Agreement, dated as of October 30, 2026, by and among the Company and each of the investors listed on the Schedule of Buyers attached thereto (individually, a "***Buyer***" and collectively, the "***Buyers***") (as may be amended from time to time, the "***Purchase Agreement***"), pursuant to which, among other things, the undersigned, as a Buyer, has agreed to purchase shares of Series B Convertible Preferred Stock of the Company (such shares purchased by the Buyers pursuant to the Purchase Agreement, "***Preferred Shares***"). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement. For the avoidance of doubt, the definitions of "Conversion Shares," "Securities," and "Common Stock" shall have the meanings set forth in the Purchase Agreement.

As a condition and inducement to the Company to enter into the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby irrevocably agrees that, subject to the exceptions set forth herein, without the prior written consent of the Company, the undersigned and any of its direct, or indirect, subsidiaries (or any other Person controlled by the undersigned) (collectively, the "***Controlled Affiliates***") will not, during the period commencing upon the Closing and ending on the earlier of (x) the date that is 180 days after the Closing Date and (y) the date of any waiver, termination or release with respect to [any of the Lock-Up Agreements] [the Ligand Lock-Up Agreement or any of the Lock-Up Agreements] ([each] as defined in the Purchase Agreement) executed by Nomis Bay Ltd., Nomis Bay Opportunity Ltd., BPY Limited, Boothbay Absolute Return Strategies, Valor R&D Series LLC, Series JO or Marshman Fund Trust II U/A/D 5/1/08 (or any successor agreement thereto) (the "***Restricted Period***"):

(i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any (A) Preferred Shares issued to the undersigned pursuant to the Purchase Agreement or (B) securities resulting from the conversion or exchange of such Preferred Shares, including Conversion Shares (collectively, the "***Undersigned's Shares***"), or publicly disclose the intention to make any such offer, sale, pledge, grant, transfer or disposition;

(ii) enter into, and shall cause its Controlled Affiliates not to enter into, any swap, short sale, hedge or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned's Shares regardless of whether any such transaction described in clause (i) above or this clause (ii) is to be settled by delivery of Preferred Shares, Conversion Shares, or other securities, in cash or otherwise; or

(iii) make any demand for, or exercise any right (including any "piggyback" registration rights under the Registration Rights Agreement) with respect to, the registration of any Preferred Shares, Conversion Shares, or any other security convertible into or exercisable or exchangeable for Preferred Shares, Conversion Shares or other shares of Common Stock (excluding any demand or exercise of rights with respect to the initial Registration Statement required to be filed pursuant to the Registration Rights Agreement).

For the avoidance of doubt, "Undersigned's Shares" shall not include (x) any shares of Common Stock or other securities of the Company owned by the undersigned prior to the date of the Purchase Agreement, (y) any shares of Common Stock or other securities of the Company issued to the undersigned in connection with the Merger or the transactions contemplated by the Merger Agreement, or (z) any shares of Common Stock or other securities of the Company acquired by the undersigned in the open market or in any public offering by the Company following the Closing.

The restrictions and obligations contemplated by this Lock-Up Agreement shall not apply to:

(a) transfers of the Undersigned's Shares:

(i) if the undersigned is a natural person, (A) to any person related to the undersigned by blood or adoption who is an immediate family member of the undersigned, or by marriage or domestic partnership (a "***Family Member***"), or to a trust formed for the direct or indirect benefit of the undersigned or any of the undersigned's Family Members, (B) to the undersigned's estate, following the death of the undersigned, by will, intestacy or other operation of law, (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) by operation of law pursuant to a qualified domestic relations order or in connection with a divorce settlement, or (E) to any partnership, corporation or limited liability company which is controlled by the undersigned and/or by any such Family Member(s);

(ii) if the undersigned is a corporation, partnership, limited liability company or other entity, (A) to another corporation, partnership, limited liability company, or other entity that is an affiliate (as defined under Rule 12b-2 of the 1934 Act) of the undersigned, including investment funds or other entities under common control or management or advisement with the undersigned (including, for the avoidance of doubt, where the undersigned is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), (B) as a distribution or dividend to equity holders, including, without limitation, current or former general or limited partners, members or managers (or to the estates of any of the foregoing), as applicable, of the undersigned (including upon the liquidation and dissolution of the undersigned pursuant to a plan of liquidation approved by the undersigned's equity holders), (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) transfers or dispositions not involving a change in beneficial ownership or (E) with prior written consent of the Company; or

(iii) if the undersigned is a trust, to any grantors or beneficiaries of the trust;

provided that, in the case of any transfer or distribution pursuant to this clause (a), such transfer is not for value and each donee, heir, beneficiary or other transferee or distributee shall, prior to or concurrently with such transfer or distribution, sign and deliver to the Company a lock-up agreement in the form of this Lock-Up Agreement with respect to the Undersigned's Shares or such other securities that have been so transferred or distributed;

(b) the establishment of a trading plan pursuant to Rule 10b5-1 under the 1934 Act (a "***10b5-1 Plan***") for the transfer of Common Stock; *provided that* (i) such plan does not provide for any transfers of the Undersigned's Shares during the Restricted Period and (ii) no sales, transfers or other dispositions of shares of the Undersigned's Shares shall be made pursuant to a 10b5-1 Plan existing as of the date of the Purchase Agreement (which, for clarity, shall not be amended during the Restricted Period to provide for the transfer of the Undersigned's Shares during the Restricted Period, but may be terminated during the Restricted Period); and *provided further* that no public announcement or filing under the 1934 Act or otherwise shall be required or voluntarily made by any party in connection with the establishment of such plan during the Restricted Period;

(c) transfers, sales, dispositions, or the entering into of transactions (including, without limitation, any swap, hedge or similar agreement) by the undersigned of or relating to shares of capital stock or other securities of the Company purchased or acquired by the undersigned on the open market following the Closing or in a public offering by the Company following the Closing;

(d) transfers of the Undersigned's Shares pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction made to all holders of the Company's capital stock involving a change of control of the Company that has been approved by the Company's Board of Directors, *provided that* in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Undersigned's Shares shall remain subject to the restrictions contained in this Lock-Up Agreement. For purposes of this clause (d), a "***change of control***" means the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons, of the Company's voting securities if, after such transfer, the Company's stockholders as of immediately prior to such transfer do not hold a majority of the outstanding voting securities of the Company (or the surviving entity);

(e) transfers of the Undersigned's Shares pursuant to an order of a court or regulatory agency;

(f) the pledge, grant of a security interest in, or collateral assignment of the Undersigned's Shares under any bona fide credit facility or similar facility maintained by the undersigned or one of its controlled affiliates; *provided that* no such pledge, grant or collateral assignment shall (i) confer upon such pledgee, grantee or assignee any right or claim against the Company or any of its Affiliates, (ii) make such pledgee, grantee or assignee a party to, or a third-party beneficiary of, this Lock-Up Agreement, or (iii) entitle such pledgee, grantee or assignee to any notice, information, audit, dispute or enforcement right hereunder or under the Purchase Agreement; *provided, further that* (x) as a condition to such pledge, grant or collateral assignment, the undersigned must continue to exercise voting control over the Undersigned's Shares which are pledged, granted or collaterally assigned and (y) a foreclosure on the Undersigned's Shares or similar action by the pledgee, grantee or assignee shall constitute a breach of this Lock-Up Agreement unless such foreclosure or other action otherwise qualifies as a transfer permitted by this Lock-Up Agreement; or

(g) the conversion of any Preferred Shares into Conversion Shares; *provided that* such Conversion Shares shall be subject to the terms of this Lock-Up Agreement;

and *provided, further*, that if, at any time during the Restricted Period, the Company releases or waives, or agrees to release or waive, any of the restrictions set forth in this Lock-Up Agreement (or a substantially similar lock-up agreement) with respect to any other Person that is a Buyer pursuant to the Purchase Agreement, on terms more favorable to such other Person than the terms set forth herein (including, without limitation, an earlier release date, a shorter Restricted Period, or a more permissive exception), then the same more favorable terms shall automatically apply to the undersigned, *mutatis mutandis*, and the Company shall promptly notify the undersigned of any such release or waiver; and *provided further* that, with respect to each of clauses (a) and (b) above, no filing by any party (including any donor, donee, transferor, transferee, distributor or distributee) under Section 16 of the 1934 Act or other public announcement shall be made voluntarily in connection with such transfer or disposition of the Undersigned's Shares during the Restricted Period; *provided that* (i) any filing under Section 16 of the 1934 Act made during the Restricted Period shall clearly indicate in the footnotes thereto that such filing relates to the circumstances described in clause (a) or (b), as applicable, and that the Undersigned's Shares of Common Stock subject thereto remain subject to this Lock-Up Agreement, and (ii) the foregoing shall not prevent the undersigned from filing a Form 13F, Schedule 13G or Schedule 13D, or any amendment thereto, or from disclosing its holdings in the Company to the extent required by applicable law.

Any attempted transfer in violation of this Lock-Up Agreement will be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the transfer restrictions set forth in this Lock-Up Agreement, and will not be recorded on the share register of the Company. In furtherance of the foregoing, the undersigned agrees that the Company and any duly appointed transfer agent for the registration or transfer of the Undersigned's Shares are hereby authorized to decline to make any transfer of the Undersigned's Shares if such transfer would constitute a violation or breach of this Lock-Up Agreement. The Company may cause the legend set forth below, or a legend substantially equivalent thereto, to be placed upon any certificate(s) or other documents, ledgers or instruments evidencing the undersigned's ownership of the Undersigned's Shares:

> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AND MAY ONLY BE TRANSFERRED IN COMPLIANCE WITH A LOCK-UP AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF PELTHOS THERAPEUTICS INC.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement and to perform its obligations hereunder, including with respect to covenants and obligations that may bind the undersigned's Controlled Affiliates. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that the Company is proceeding with the transactions contemplated by the Purchase Agreement in reliance upon this Lock-Up Agreement. Notwithstanding anything to the contrary contained herein, this Lock-Up Agreement will automatically terminate and the undersigned shall be released from all obligations under this Lock-Up Agreement upon the valid termination of the Purchase Agreement.

Any and all remedies herein expressly conferred upon the Company will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity, and the exercise by the Company of any one remedy will not preclude the exercise of any other remedy. The undersigned agrees that irreparable damage, for which monetary damages, even if available, would not be an adequate remedy, would occur to the Company in the event that any provision of this Lock-Up Agreement were not performed by the undersigned or its Controlled Affiliate, if applicable, in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the Company shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent breaches of this Lock-Up Agreement and to enforce specifically the terms and provisions hereof (without any requirement to post any bond or other security in connection with seeking such relief) in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which the Company is entitled at law or in equity. The undersigned further agrees that it will not oppose the granting of an injunction, specific performance or other equitable relief on the basis that the Company has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity.

Upon the release of any of the Undersigned's Shares from this Lock-Up Agreement, the Company will cooperate with the undersigned to facilitate the timely preparation and delivery of certificates representing the Undersigned's Shares without the restrictive legend above or the withdrawal of any stop transfer instructions.

This Lock-Up Agreement and any claim, controversy or dispute arising under or related to this Lock-Up Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of Delaware.

IN ANY ACTION OR PROCEEDING BETWEEN THE UNDERSIGNED, ON THE ONE HAND AND THE COMPANY, OR ANY OF ITS SUBSIDIARIES, ON THE OTHER HAND, ARISING OUT OF OR RELATING TO THIS LOCK-UP AGREEMENT, EACH OF THE UNDERSIGNED, AND THE COMPANY: (A) CONSENTS TO SUBMIT ITSELF TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE, NEW CASTLE COUNTY, OR, IF THAT COURT DOES NOT HAVE JURISDICTION, A STATE OR FEDERAL COURT SITTING IN WILMINGTON, DELAWARE, (B) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN ANY SUCH COURT, (C) AGREES THAT IT SHALL NOT ATTEMPT TO DENY OR DEFEAT SUCH PERSONAL JURISDICTION BY MOTION OR OTHER REQUEST FOR LEAVE FROM ANY SUCH COURT, (D) AGREES NOT TO BRING ANY SUCH ACTION OR PROCEEDING IN ANY OTHER COURT, (E) WAIVES ANY DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY ACTION OR PROCEEDING SO BROUGHT AND WAIVES ANY BOND, SURETY OR OTHER SECURITY THAT MIGHT BE REQUIRED OF ANY OTHER PARTY WITH RESPECT THERETO, AND (F) AGREES THAT IF NOTICE IS GIVEN IN WRITING, WITH RESPECT TO THE UNDERSIGNED, TO THE ADDRESS OF THE UNDERSIGNED SET FORTH ON THE SIGNATURE PAGES HERETO, AND WITH RESPECT TO THE COMPANY, TO THE ADDRESS SET FORTH ABOVE, SERVICE OF PROCESS UPON SUCH PARTY IN ANY SUCH ACTION OR PROCEEDING SHALL BE EFFECTIVE (I) THREE (3) BUSINESS DAYS AFTER BEING SENT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, (II) ONE (1) BUSINESS DAY AFTER BEING SENT FOR NEXT BUSINESS DAY DELIVERY, FEES PREPAID, VIA A REPUTABLE OVERNIGHT COURIER SERVICE, (III) ON THE DATE TRANSMITTED BY E-MAIL (PROVIDED THAT NO "BOUNCE BACK" OR SIMILAR MESSAGE OF NON-DELIVERY IS RECEIVED WITH RESPECT THERETO), OR (IV) ON THE DATE PERSONALLY DELIVERED TO AN AUTHORIZED OFFICER OF THE PARTY TO WHICH SENT. EACH OF THE COMPANY AND THE UNDERSIGNED HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY RELEVANT MATTER. EACH OF THE COMPANY AND THE UNDERSIGNED (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY HERETO WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS LOCK-UP AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS HEREIN.

This Lock-Up Agreement may be executed in two or more counterparts (including by facsimile or by an electronic scan delivered by electronic mail), each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. To the extent signed and delivered by means of a facsimile machine, by email delivery of a ".pdf" or ".jpg" format data file or by any electronic signature complying with the U.S. federal ESIGN Act of 2000, this Lock-Up Agreement shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in Person. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine, email delivery of a ".pdf" or ".jpg" format data file or electronic signature complying with the U.S. federal ESIGN Act of 2000 to deliver a signature to this Lock-Up Agreement or any amendment hereto or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine, email delivery of a ".pdf" or ".jpg" format data file or by any electronic signature complying with the U.S. federal ESIGN Act of 2000 as a defense to the formation of a contract and each party hereto forever waives any such defense.

(Signature Page Follows)

Exhibit 10.5

FORM OF REGISTRATION RIGHTS AGREEMENT

This **REGISTRATION RIGHTS AGREEMENT** (this "**Agreement**"), dated as of [·], 2026, is by and among Pelthos Therapeutics Inc., a Nevada corporation with offices located at 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703 (the "**Company**"), and the undersigned buyers (each, a "**Buyer**," and collectively, the "**Buyers**").

RECITALS

A. The Company is party to that certain Agreement and Plan of Merger (the "**Merger Agreement**"), with Castle Creek Biosciences, Inc., a Delaware corporation ("**Merger Partner**"), Credit Card Merger Sub Inc., a Delaware corporation and wholly-owned subsidiary of the Company ("**Merger Sub I**"), Credit Card Merger Sub LLC, a Delaware limited liability company and wholly-owned subsidiary of the Company ("**Merger Sub II**"), and Paragon Biosciences, LLC, a Delaware limited liability company, as the securityholder representative (the "**Securityholder Representative**"), pursuant to which, among other things, (i) Merger Sub I shall merge with and into Merger Partner and, at the closing thereof, Merger Partner, as the surviving entity, shall be a wholly-owned subsidiary of the Company (the "**First Merger**") and (ii) immediately following the First Merger, Merger Partner shall merge with and into Merger Sub II and, at the closing thereof, Merger Sub II, as the surviving entity, shall continue as the surviving company and will remain a wholly-owned subsidiary of the Company (the "**Second Merger**," and, together with the First Merger, the "**Mergers**").

B. The Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, dated as of October 30, 2026 (the "**Securities Purchase Agreement**"), to issue and sell to each Buyer, immediately prior to the effective time of the First Merger, (i) the Preferred Shares (as defined in the Securities Purchase Agreement) which will be convertible into Conversion Shares (as defined in the Securities Purchase Agreement) in accordance with the terms of the Certificate of Designations (as defined in the Securities Purchase Agreement) and (ii) the Warrants (as defined in the Securities Purchase Agreement) which will be exercisable for Warrant Shares (as defined in the Securities Purchase Agreement) in accordance with the terms of the Warrants.

C. To induce the Buyers to consummate the transactions contemplated by the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "**1933 Act**"), and applicable state securities laws.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each of the Buyers hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

(a) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

(b) "**Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement.

(c) "**Effective Date**" means the date that the applicable Registration Statement has been declared effective by the SEC.

(d) "**Effectiveness Deadline**" means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the earlier of the (A) 90th calendar day after the Closing Date (or the 120th calendar day if subject to a full review by the SEC) and (B) 5th Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the earlier of the (A) 60th calendar day (or the 90th calendar day if subject to a full review by the SEC) following the date on which the Company was required to file such additional Registration Statement and (B) 5th Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review. If the Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(e) "**Filing Deadline**" means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the later of the 30th calendar day after the Closing Date and 15 calendar days after the due date (which shall include any extensions granted by a timely filed Form 12b-25) of the next periodic report required pursuant to Section 13 of the 1934 Act (as defined below), and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the date on which the Company was required to file such additional Registration Statement pursuant to Section 2(d) or Section 2(f) of this Agreement, as applicable.

(f) "**Investor**" means a Buyer or any transferee or assignee of any Registrable Securities, Preferred Shares or Warrants to whom a Buyer assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee of any Registrable Securities, Preferred Shares or Warrants assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

(g) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization or a government or any department or agency thereof.

(h) "**register**," "**registered**," and "**registration**" refer to a registration effected by preparing and filing one or more Registration Statements in compliance with the 1933 Act and pursuant to Rule 415 and the declaration of effectiveness of such Registration Statement(s) by the SEC.

(i) "**Registrable Securities**" means (i) the Conversion Shares, (ii) the Warrant Shares and (iii) any capital stock of the Company issued or issuable with respect to the Conversion Shares, the Warrant Shares, the Preferred Shares and/or the Warrants, as applicable, including, without limitation, (1) as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise and (2) shares of capital stock of the Company into which the shares of Common Stock (as defined in the Certificate of Designations) are converted or exchanged and shares of capital stock of a Successor Entity (as defined in the Certificate of Designations) into which the shares of Common Stock are converted or exchanged, in each case, without regard to any limitations on conversion of the Preferred Shares or exercise of the Warrants; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) upon the earliest to occur of (i) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the SEC under the 1933 Act and such Registrable Securities have been disposed of by the Buyer in accordance with such effective Registration Statement, or (ii) such Registrable Securities have been previously sold in accordance with Rule 144.

(j) "**Registration Statement**" means a registration statement or registration statements of the Company filed under the 1933 Act covering Registrable Securities.

(k) "**Required Holders**" means, as of any given time, the holders of a majority of the Registrable Securities as of such time (excluding any Registrable Securities held by the Company or any of its Subsidiaries as of such time).

(l) "**Required Registration Amount**" means, as of any date of determination, the sum of (i) the maximum number of Conversion Shares then issuable upon conversion of the Preferred Shares (assuming for purposes hereof that any such conversion shall not take into account any limitations on the conversion of the Preferred Shares set forth in the Certificate of Designations) and (ii) the maximum number of Warrant Shares then issuable upon exercise of the Warrants (assuming for purposes hereof that any such exercise shall not take into account any limitations on the exercise of the Warrants set forth therein), subject to adjustment as provided in Section 2(d) and/or Section 2(f).

(m) "**Rule 144**" means Rule 144 promulgated by the SEC under the 1933 Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration.

(n) "**Rule 415**" means Rule 415 promulgated by the SEC under the 1933 Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the SEC providing for offering securities on a continuous or delayed basis.

(o) "**SEC**" means the United States Securities and Exchange Commission or any successor thereto.

2. Registration.

(a) Mandatory Registration. The Company shall prepare and, as soon as practicable, but in no event later than the Filing Deadline, file with the SEC an initial Registration Statement on Form S-3 covering the resale of all of the Registrable Securities; provided that such initial Registration Statement shall register for resale at least the number of shares of Common Stock equal to the Required Registration Amount as of the date such Registration Statement is initially filed with the SEC; provided further that if Form S-3 is unavailable for such a registration, the Company shall use such other form as is required by Section 2(c). Such initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms of this Agreement, shall contain (except if otherwise directed by the Required Holders) the "Selling Stockholders" and "Plan of Distribution" sections in substantially the form attached hereto as **Exhibit B**. The Company shall use its reasonable best efforts to have such initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms of this Agreement, declared effective by the SEC as soon as practicable, but in no event later than the applicable Effectiveness Deadline for such Registration Statement.

(b) [Reserved].

(c) Ineligibility to Use Form S-3. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on Form S-1 or another appropriate form reasonably acceptable to the Required Holders and (ii) undertake to register the resale of the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of all Registration Statements then in effect until the earlier of (i) such time as a Registration Statement on Form S-3 covering the resale of all the Registrable Securities has been declared effective by the SEC and the prospectus contained therein is available for use and (ii) the end of the Registration Period.

(d) Sufficient Number of Shares Registered. In the event the number of shares available under any Registration Statement is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 2(h), the Company shall amend such Registration Statement (if permissible), or file with the SEC a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Business Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than (i) the later of the 30th calendar day after the necessity therefor arises and (ii) 15 calendar days after the due date (which shall include any extensions granted by a timely filed Form 12b-25) of the next periodic report required pursuant to Section 13 of the 1934 Act (but taking account of any Staff position with respect to the date on which the Staff will permit such amendment to the Registration Statement and/or such new Registration Statement (as the case may be) to be filed with the SEC). The Company shall use its reasonable best efforts to cause such amendment to such Registration Statement and/or such new Registration Statement (as the case may be) to become effective as soon as practicable following the filing thereof with the SEC, but in no event later than the applicable Effectiveness Deadline for such Registration Statement. For purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of shares of Common Stock available for resale under the applicable Registration Statement is less than the product determined by multiplying (i) the Required Registration Amount as of such time by (ii) 0.90. The calculation set forth in the foregoing sentence shall be made without regard to any limitations on conversion, amortization and/or redemption of the Preferred Shares or on exercise of the Warrants (and such calculation shall assume (A) that the Preferred Shares are then convertible in full into shares of Common Stock at the then prevailing Conversion Rate (as defined in the Certificate of Designations), (B) the initial Stated Value (as defined in the Certificate of Designations) of the Preferred Shares held by such Buyer remains outstanding and no redemptions of the Preferred Shares occur and (C) that the Warrants are then exercisable in full for the number of Warrant Shares then issuable thereunder).

(e) [Reserved].

(f) Offering. Notwithstanding anything to the contrary contained in this Agreement, in the event the staff of the SEC (the "**Staff**") or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities by, or on behalf of, the Company, or in any other manner, such that the Staff or the SEC do not permit such Registration Statement to become effective and used for resales in a manner that does not constitute such an offering and that permits the continuous resale to the market by the Investors participating therein (or as otherwise may be acceptable to each Investor) without being named therein as an "underwriter," then the Company shall reduce the number of shares to be included in such Registration Statement by all Investors until such time as the Staff and the SEC shall so permit such Registration Statement to become effective as aforesaid. In making such reduction, the Company shall reduce the number of shares to be included by all Investors on a pro rata basis (based upon the number of Registrable Securities otherwise required to be included for each Investor) unless the inclusion of shares by a particular Investor or a particular set of Investors are resulting in the Staff or the SEC's "by or on behalf of the Company" offering position, in which event the shares held by such Investor or set of Investors shall be the only shares subject to reduction (and if by a set of Investors on a pro rata basis by such Investors or on such other basis as would result in the exclusion of the least number of shares by all such Investors); provided, that, with respect to such pro rata portion allocated to any Investor, such Investor may elect the allocation of such pro rata portion among the Registrable Securities of such Investor. In addition, in the event that the Staff or the SEC requires any Investor seeking to sell securities under a Registration Statement filed pursuant to this Agreement to be specifically identified as an "underwriter" in order to permit such Registration Statement to become effective, and such Investor does not consent to being so named as an underwriter in such Registration Statement, then, in each such case, the Company shall reduce the total number of Registrable Securities to be registered on behalf of such Investor, until such time as the Staff or the SEC does not require such identification or until such Investor accepts such identification and the manner thereof. Any reduction pursuant to this paragraph will first reduce all securities other than those issued pursuant to the Securities Purchase Agreement. In the event of any reduction in Registrable Securities pursuant to this paragraph, an affected Investor shall have the right to require, upon delivery of a written request to the Company signed by such Investor, the Company to file a Registration Statement within twenty (20) days of such request (subject to any restrictions imposed by Rule 415 or required by the Staff or the SEC) for resale by such Investor in a manner acceptable to such Investor, and the Company shall following such request cause to be and keep effective such Registration Statement in the same manner as otherwise contemplated in this Agreement for Registration Statements hereunder, in each case until such time as: (i) all Registrable Securities held by such Investor have been registered and sold pursuant to an effective Registration Statement in a manner acceptable to such Investor or (ii) all Registrable Securities may be resold by such Investor without restriction (including, without limitation, volume limitations) pursuant to Rule 144 (taking account of any Staff position with respect to "affiliate" status) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or (iii) such Investor agrees to be named as an underwriter in any such Registration Statement in a manner acceptable to such Investor as to all Registrable Securities held by such Investor and that have not theretofore been included in a Registration Statement under this Agreement (it being understood that the special demand right under this sentence may be exercised by an Investor multiple times and with respect to limited amounts of Registrable Securities in order to permit the resale thereof by such Investor as contemplated above).

(g) Piggyback Registrations. Without limiting any obligation of the Company hereunder or under the Securities Purchase Agreement, until the fifth anniversary of the Closing Date, if there is not an effective Registration Statement covering all of the Registrable Securities or the prospectus contained therein is not available for use and the Company shall determine to prepare and file with the SEC a Registration Statement or offering statement relating to an offering for its own account or the account of others under the 1933 Act of any of its equity securities (other than on Form S-4 or Form S-8 (each as promulgated under the 1933 Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans), then the Company shall deliver to each Investor a written notice of such determination and, if within fifteen (15) days after the date of the delivery of such notice, any such Investor shall so request in writing, the Company shall include in such Registration Statement or offering statement all or any part of such Registrable Securities such Investor requests to be registered; provided, however, the Company shall not be required to register any Registrable Securities pursuant to this Section 2(g) that are eligible for resale pursuant to Rule 144 without restriction (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or that are the subject of a then-effective Registration Statement.

(h) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time such Registration Statement covering such initial number of Registrable Securities or increase thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee or assignee (as the case may be) that becomes an Investor shall be allocated a pro rata portion of the then-remaining number of Registrable Securities included in such Registration Statement for such transferor or assignee (as the case may be). During the Registration Period, any shares of Common Stock included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities covered by such Registration Statement, at the written request of any Investor, shall be allocated to the remaining Investors, pro rata based on the number of Registrable Securities then held by such Investors which are covered by such Registration Statement.

(i) No Inclusion of Other Securities. The Company shall in no event include any securities other than Registrable Securities on any Registration Statement filed in accordance herewith without the prior written consent of the Required Holders.

(j) No Underwriter Status. No Investor shall be named as an "underwriter" in any Registration Statement without such Investor's prior written consent; provided, that if the SEC requires that an Investor be identified as a statutory underwriter in a Registration Statement (after giving effect to any "cutback" pursuant to Rule 415), such Investor will have the option, in its sole and absolute discretion, to either (i) withdraw from such Registration Statement upon its prompt written request to the Company or (ii) be included as such in the Registration Statement.

3. Related Obligations.

The Company shall use its reasonable best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof, and, pursuant thereto, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to all the Registrable Securities (but in no event later than the applicable Filing Deadline) and use its reasonable best efforts to cause such Registration Statement to become effective as soon as practicable after such filing (but in no event later than the Effectiveness Deadline). Subject to any applicable Suspension Period (as defined below), the Company shall keep each Registration Statement effective (and the prospectus contained therein available for use) pursuant to Rule 415 for resales by the Investors on a delayed or continuous basis at then-prevailing market prices (and not fixed prices) at all times until the earliest of: (i) the date as of which all of the Investors may sell all of the Registrable Securities required to be covered by such Registration Statement (disregarding any reduction pursuant to Section 2(f)) without restriction pursuant to Rule 144 (including, without limitation, volume or manner-of-sale restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable), (ii) the date on which the Investors shall have sold all of the Registrable Securities covered by such Registration Statement and (iii) the fifth anniversary of the Closing Date (the "**Registration Period**"). Notwithstanding anything to the contrary contained in this Agreement, the Company shall ensure that, when filed and at all times while effective, each Registration Statement (including, without limitation, all amendments and supplements thereto) and the prospectus (including, without limitation, all amendments and supplements thereto) used in connection with such Registration Statement (1) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading and (2) will disclose (whether directly or through incorporation by reference to other SEC filings to the extent permitted) all material information regarding the Company and its securities.

(b) Subject to Section 3(q) of this Agreement, the Company shall prepare and file with the SEC such amendments (including, without limitation, post-effective amendments) and supplements to each Registration Statement and the prospectus used in connection with each such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep each such Registration Statement effective at all times during the Registration Period for such Registration Statement, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company required to be covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement; provided, however, by 8:30 a.m. (New York time) on the Business Day immediately following each Effective Date, the Company shall file with the SEC in accordance with Rule 424(b) under the 1933 Act the final prospectus to be used in connection with sales pursuant to the applicable Registration Statement (whether or not such a prospectus is technically required by such rule). In the case of amendments and supplements to any Registration Statement which are required to be filed pursuant to this Agreement (including, without limitation, pursuant to this Section 3(b)) by reason of the Company filing a report on Form 8-K, Form 10-Q or Form 10-K or any analogous report under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), the Company shall, if permitted under the applicable rules and regulations of the SEC, have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

(c) As far in advance as reasonably practicable, but in any event not less than five (5) Business Days prior to the filing of each Registration Statement and not less than one (1) Business Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to each Investor copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Investor, and (ii) use commercially reasonable efforts to cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Investor, to conduct a reasonable investigation within the meaning of the 1933 Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Required Holders shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than three (3) Business Days after the Investors have been so furnished copies of a Registration Statement or one (1) Business Day after the Investors have been so furnished copies of any related Prospectus or amendments or supplements thereto. The Company shall promptly furnish to the Investors, without charge, (i) copies of any correspondence from the SEC or the Staff to the Company or its representatives relating to each Registration Statement, provided that such correspondence shall not contain any material, non-public information regarding the Company or any of its Subsidiaries (as defined in the Securities Purchase Agreement), (ii) after the same is prepared and filed with the SEC, one (1) copy of each Registration Statement and any amendment(s) and supplement(s) thereto, including, without limitation, financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, and all exhibits and (iii) upon the effectiveness of each Registration Statement, one (1) copy of the prospectus included in such Registration Statement and all amendments and supplements thereto. The Company shall reasonably cooperate with the Investors in performing the Company's obligations pursuant to this Section 3.

(d) If requested by an Investor, the Company shall promptly furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, (i) after the same is prepared and filed with the SEC, at least one (1) copy of each Registration Statement and any amendment(s) and supplement(s) thereto, including, without limitation, financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, all exhibits and each preliminary prospectus, (ii) upon the effectiveness of each Registration Statement, a copy of the prospectus included in such Registration Statement and all amendments and supplements thereto and (iii) such other documents, including, without limitation, copies of any preliminary or final prospectus, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

(e) The Company shall use its reasonable best efforts to register or qualify or cooperate with the selling Investors in connection with the registration or qualification (or exemption from the registration or qualification) of such Registrable Securities for the resale by the Investor under the securities or Blue Sky laws of such jurisdictions within the United States as any Investor reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Registration Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(f) The Company shall notify the Investors in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, may include an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, non-public information regarding the Company or any of its Subsidiaries) (which notice shall be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made), and, subject to Section 3(q), promptly prepare a supplement or amendment to such Registration Statement and such prospectus contained therein to correct such untrue statement or omission. The Company shall also promptly notify each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to each Investor by facsimile or e-mail on the same day of such effectiveness and by overnight mail), and when the Company receives written notice from the SEC that a Registration Statement or any post-effective amendment will be reviewed by the SEC, (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be reasonably necessary, and (iv) of the receipt of any request by the SEC or any other federal or state governmental authority for any additional information relating to the Registration Statement or any amendment or supplement thereto or any related prospectus. The Company shall respond as promptly as practicable to any comments received from the SEC with respect to each Registration Statement or any amendment thereto. Each Investor may deliver written notice (an "**Opt-Out Notice**") to the Company requesting that such Investor not receive notices from the Company otherwise required by this Section 3(f). Following receipt of an Opt-Out Notice from an Investor (unless subsequently revoked), the Company shall not deliver any notices to such Investor pursuant to this Section 3(f) and such Investor shall no longer be entitled to the rights associated with any such notice; provided, however, that such Investor may later revoke any such Opt-Out Notice in writing, which revocation shall be effective five (5) Business Days after the receipt thereof by the Company.

(g) The Company shall (i) use its reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of each Registration Statement or the use of any prospectus contained therein, or the suspension of the qualification, or the loss of an exemption from qualification, of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and (ii) notify each Investor who holds Registrable Securities of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(h) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, at the request of any Investor, the Company shall furnish to such Investor, on the date of the effectiveness of such Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request certificates, dated as of such date, of the Company's Chief Executive Officer, Chief Financial Officer and/or Secretary representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Investors.

(i) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, upon the written request of such Investor, the Company shall make available for inspection by (i) such Investor, (ii) legal counsel for such Investor and (iii) one (1) firm of accountants or other agents retained by such Investor (collectively, the "**Inspectors**"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "**Records**"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, each Inspector shall agree in writing to hold in strict confidence and not to make any disclosure (except to such Investor) or use of any Record or other information which the Company's board of directors determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (1) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (2) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document (as defined in the Securities Purchase Agreement). Such Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and such Investor, if any) shall be deemed to limit any Investor's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(j) The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required to be disclosed in such Registration Statement pursuant to the 1933 Act, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor, at such Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(k) Without limiting any obligation of the Company under the Securities Purchase Agreement, the Company shall use its reasonable best efforts to (i) cause all of the Registrable Securities covered by each Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange or (ii) if, despite the Company's reasonable best efforts to satisfy the preceding clause (i) the Company is unsuccessful in satisfying the preceding clause (i), without limiting the generality of the foregoing, use its reasonable best efforts to arrange for at least two market makers to register with the Financial Industry Regulatory Authority ("**FINRA**") as such with respect to such Registrable Securities. In addition, the Company shall cooperate with each Investor and any broker or dealer through which any such Investor proposes to sell its Registrable Securities in effecting a filing with FINRA pursuant to FINRA Rule 5110 as requested by such Investor. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 3(k).

(l) The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts (as the case may be) as the Investors may reasonably request from time to time and registered in such names as the Investors may request.

(m) If requested by an Investor, the Company shall as soon as practicable after receipt of notice from such Investor and subject to Section 3(q) hereof, (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement or prospectus contained therein if reasonably requested by an Investor holding any Registrable Securities.

(n) The Company shall use its reasonable best efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(o) If required, the Company shall make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in a form complying with, and in the manner provided by, the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the applicable Effective Date of each Registration Statement.

(p) The Company shall otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC in connection with any Registration Statement hereunder.

(q) Upon the occurrence of any event contemplated by the first sentence of Section 3(f), clauses (ii) and (iii) of the second sentence of Section 3(f) and Section 3(g), as promptly as reasonably possible under the circumstances taking into account the Company's good faith determination of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Investors in accordance with the first sentence of Section 3(f), clauses (ii) and (iii) of the second sentence of Section 3(f) and Section 3(g) above to suspend the use of any prospectus until the requisite changes to such prospectus have been made, then the Investors shall suspend use of such Prospectus; provided that the Company shall only be entitled to exercise its right under this Section 3(q) to suspend the availability of a Registration Statement and Prospectus up to two (2) occasions in any 12-month period for a period not to exceed 45 consecutive days or a total of ninety (90) calendar days, in each case in any such 12- month period (each, a "**Suspension Period**"), and in no event may two Suspension Periods occur within fifteen (15) calendar days of one another. The Company will use its reasonable best efforts to ensure that the use of the prospectus may be resumed as promptly as is reasonably practicable.

(r) The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by each Investor of its Registrable Securities pursuant to each Registration Statement.

(s) Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Buyers in this Agreement or otherwise conflicts with the provisions hereof.

4. Obligations of the Investors.

(a) At least five (5) Business Days prior to the first anticipated filing date of each Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor with respect to such Registration Statement, which shall include a questionnaire in the form attached to this Agreement as **Exhibit A** (a "**Selling Shareholder Questionnaire**"). Each Investor agrees to furnish to the Company a completed Selling Shareholder Questionnaire by the end of the tenth (10^{th}) Business Day following the date on which such Investor receives a request in accordance with this Section. The Company shall not be required to include Registrable Securities in the Registration Statement for any Investor that has not provided such Selling Shareholder Questionnaire. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of each Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

5. Expenses of Registration.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, FINRA filing fees (if any) and fees and disbursements of counsel for the Company shall be paid by the Company. The Company shall reimburse one legal counsel for Nomis Bay LTD. for its fees and disbursements in connection with registration, filing or qualification pursuant to Sections 2 and 3 of this Agreement which amount shall be limited to $5,000 for each Registration Statement, one legal counsel for Ligand Pharmaceuticals Incorporated for its fees and disbursements in connection with registration, filing or qualification pursuant to Sections 2 and 3 of this Agreement which amount shall be limited to $5,000 for each Registration Statement, and one legal counsel for Marshman Fund Trust II U/A/D 5/1/08 for the fees and disbursements of such Investors in connection with registration, filing or qualification pursuant to Sections 2 and 3 of this Agreement which amount shall be limited to $5,000 for each Registration Statement. In no event shall the Company be responsible for any underwriting, broker or similar fees or commissions of any Investor.

6. Indemnification.

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor and each of its directors, officers, shareholders, members, partners, employees, agents, advisors, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) and each Person, if any, who controls such Investor within the meaning of the 1933 Act or the 1934 Act and each of the directors, officers, shareholders, members, partners, employees, agents, advisors, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) of such controlling Persons (each, an "**Investor Indemnified Person**"), against any losses, obligations, claims, damages, liabilities, contingencies, judgments, fines, penalties, charges, costs (including, without limitation, court costs, reasonable attorneys' fees and costs of defense and investigation), amounts paid in settlement or expenses, joint or several, (collectively, "**Claims**") incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an Investor Indemnified Person is or may be a party thereto ("**Indemnified Damages**"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("**Blue Sky Filing**"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading or (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement (the matters in the foregoing clauses (i) through (iii) being, collectively, "**Violations**"). Subject to Section 6(c), the Company shall reimburse the Investor Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Investor Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Investor Indemnified Person for such Investor Indemnified Person expressly for use in connection with the preparation of such Registration Statement or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3(d); and (ii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Investor Indemnified Person and shall survive the transfer of any of the Registrable Securities by any of the Investors pursuant to Section 9.

(b) In connection with any Registration Statement in which an Investor is participating, such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, a "**Company Indemnified Person**"), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case, to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(c) and the below provisos in this Section 6(b), such Investor will reimburse a Company Indemnified Person for any legal or other expenses reasonably incurred by such Company Indemnified Person in connection with investigating or defending any such Claim; provided, however, the indemnification agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed, provided further that such Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the applicable sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Company Indemnified Person and shall survive the transfer of any of the Registrable Securities by any of the Investors pursuant to Section 9.

(c) Promptly after receipt by any person entitled to indemnification hereunder (an "**Indemnified Person**") under this Section 6 of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving a Claim, such Indemnified Person shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person; provided, however, an Indemnified Person shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Claim and to employ counsel reasonably satisfactory to such Indemnified Person in any such Claim; or (iii) the named parties to any such Claim (including, without limitation, any impleaded parties) include both such Indemnified Person and the indemnifying party, and such Indemnified Person shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Person and the indemnifying party (in which case, if such Indemnified Person notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the indemnifying party, provided further that in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for such Indemnified Person. The Indemnified Person shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Indemnified Person reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Person of a release from all liability in respect to such Claim or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnified Person. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person under this Section 6, except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action.

(d) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(e) The indemnification and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6 of this Agreement; (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to such Registration Statement. Notwithstanding the provisions of this Section 7, no Investor shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that such Investor has otherwise been required to pay, or would otherwise be required to pay under Section 6(b), by reason of such untrue or alleged untrue statement or omission or alleged omission.

8. Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements (it being understood and agreed that nothing herein shall limit any obligations of the Company under the Securities Purchase Agreement) and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting, submission and posting requirements of Rule 144, the 1933 Act and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company with the SEC if such reports are not publicly available via EDGAR, and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

9. Assignment of Registration Rights.

Each Investor may transfer or assign its respective rights hereunder in the manner and to the Persons as permitted under the Securities Purchase Agreement; provided in each case that (i) such Investor agrees in writing with the transferee or assignee to assign such rights and related obligations under this Agreement, and for the transferee or assignee to assume such obligations, and a copy of such agreement is furnished to the Company within a reasonable time after such transfer or assignment (as the case may be); (ii) the Company is, within a reasonable time after such transfer or assignment (as the case may be), furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being transferred or assigned; (iii) at or before the time the Company received the written notice contemplated by clause (ii) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein; (iv) immediately following such transfer or assignment (as the case may be) the further disposition of such securities by such transferee or assignee (as the case may be) is restricted under the 1933 Act or applicable state securities laws if so required; and (v) the transferee is an “accredited investor,” as that term is defined in Rule 501 of Regulation D.

10. Amendment of Registration Rights.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Holders; provided that any such amendment or waiver that complies with the foregoing, but that disproportionately, materially and adversely affects the rights and obligations of any Investor relative to the comparable rights and obligations of the other Investors shall require the prior written consent of such adversely affected Investor. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company, provided that no such amendment shall be effective to the extent that it (1) applies to less than all of the holders of Registrable Securities or (2) imposes any obligation or liability on any Investor without such Investor's prior written consent (which may be granted or withheld in such Investor's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to this Agreement.

11. Miscellaneous.

(a) Solely for purposes of this Agreement, a Person is deemed to be a holder of Registrable Securities whenever such Person owns, or is deemed to own, of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by or electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with a nationally recognized overnight delivery service with next day delivery specified, in each case, properly addressed to the party to receive the same. The mailing addresses and email addresses for such communications shall be:

If to the Company:

Pelthos Therapeutics Inc.
Attention: Chief Executive Officer; Chief Financial Officer
4020 Stirrup Creek Drive
Suite 110
Durham, NC 27703
Telephone: [***]; [***]
Attention: Scott M. Plesha, Chief Executive Officer
John M. Gay, Chief Financial Officer
E-Mail: [***]; [***];
[***]

With a copy (for informational purposes only) to:

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Telephone: [***]; [***]
Attention: Peter Handrinos; Leah Sauter
E-Mail: [***]; [***]

If to the Transfer Agent:

Nevada Agency and Transfer Company
50 West Liberty Street, Suite 880
Reno, NV 89501
Telephone: [***]
Attention: Amanda Cardinalli
E-Mail: [***]

If to a Buyer, to its mailing address and/or email address set forth on the Schedule of Buyers attached to the Securities Purchase Agreement, with copies to such Buyer's representatives as set forth on the Schedule of Buyers, or to such other address, and/or email address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's email containing the time, date or email address and recipient's email address or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by email or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof. The Company and each Investor acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement by any other party hereto and to enforce specifically the terms and provisions hereof (without the necessity of showing economic loss and without any bond or other security being required), this being in addition to any other remedy to which any party may be entitled by law or equity.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(e) If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(f) This Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein constitute the entire agreement among the parties hereto and thereto solely with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto solely with respect to the subject matter hereof and thereof; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Investor has entered into with the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Investor in the Company, (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries or any rights of or benefits to any Investor or any other Person in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Investor and all such agreements shall continue in full force and effect or (iii) limit any obligations of the Company under any of the other Transaction Documents.

(g) Subject to compliance with Section 9 (if applicable), this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto. This Agreement is not for the benefit of, nor may any provision hereof be enforced by, any Person, other than the parties hereto, their respective permitted successors and assigns and the Persons referred to in Sections 6 and 7 hereof.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(i) This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original, but all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an email which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party. Notwithstanding anything to the contrary set forth in Section 10, terms used in this Agreement but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by each Investor.

(l) All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Required Holders, determined as if all of the outstanding Preferred Shares then held by the Investors have been converted, and all of the outstanding Warrants then held by the Investors have been exercised, into Registrable Securities without regard to any limitations on redemption, amortization and/or conversion of the Preferred Shares or exercise of the Warrants.

(m) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(n) The obligations of each Investor under this Agreement and the other Transaction Documents are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under this Agreement or any other Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Investor pursuant hereto or thereto, shall be deemed to constitute the Investors as, and the Company acknowledges that the Investors do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Investors are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Investors are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by this Agreement or any of the other Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained herein was solely in the control of the Company, not the action or decision of any Investor, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Investor. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and an Investor, solely, and not between the Company and the Investors collectively and not between and among Investors.

[signature page follows]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

PELTHOS THERAPEUTICS INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

BUYERS

[NAME]

By: _____
Name:
Title:

EXHIBIT A

SELLING SHAREHOLDER QUESTIONNAIRE

SELLING SHAREHOLDER QUESTIONNAIRE

_____

Name of Selling Shareholder (please print)

PELTHOS THERAPEUTICS INC.

QUESTIONNAIRE FOR SELLING SHAREHOLDERS

IMPORTANT: IMMEDIATE ATTENTION REQUIRED

The undersigned owner of Registrable Securities (as such term is defined in the Registration Rights Agreement) of Pelthos Therapeutics Inc., a Nevada corporation (the "***Company***"), understands that the Company intends to file with the Securities and Exchange Commission (the "***SEC***") a registration statement for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "***Securities Act***"), of the Registrable Securities (the "***Registration Statement***") issued pursuant to that certain Securities Purchase Agreement, dated as of October 30, 2026, to which the Company and the undersigned are parties (the "***Purchase Agreement***"), and in accordance with the terms of that certain Registration Rights Agreement, dated as of [·], 2026, to which the Company and the undersigned are parties (the "***Registration Rights Agreement***"). The undersigned owner of Registrable Securities (the "***Investor***") understands that, pursuant to the Registration Rights Agreement, the undersigned will be named as a selling shareholder in the prospectus that forms a part of the Registration Statement, and the Company will use the information that the undersigned provides in this questionnaire to ensure the accuracy of the Registration Statement and the prospectus. **The Company must receive a completed Questionnaire from each Investor in order to include such Investor's Registrable Securities in the Registration Statement.**

Please note that if the entity completing this questionnaire is not a natural person, in addition to disclosing any material relationships between the Company and that entity, you should also provide relevant information about any persons (whether they are entities or natural persons) who exercise discretionary control over the entity completing this questionnaire, and who have had a material relationship with the registrant or any of its predecessors or affiliates within the past three years.

The furnishing of accurate and complete responses to the questions posed in this Questionnaire is an extremely important part of the registration process. The inclusion of inaccurate or incomplete disclosures in the Registration Statement can result in potential liabilities, both civil and criminal, to the Company and to the individuals who furnish the information. Accordingly, Investors are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Registration Statement and related prospectus.

PLEASE GIVE A RESPONSE TO EVERY QUESTION, indicating "None" or "Not Applicable" where appropriate. **Please complete, sign, and return one copy of this Questionnaire by email or overnight courier as soon as possible and no later than [·], 2026.**

[·]

Attn: [·]
E-mail: [·]

Unless stated otherwise, answers should be given as of the date you complete this Questionnaire. However, it is your responsibility to inform us of any changes that may occur to your situation. If there is any situation about which you have any doubt, or if you are uncertain as to the meaning of any terms used in this Questionnaire, please contact [·] at [·] or [·].

PART I - STOCK OWNERSHIP

Item 1. Beneficial Ownership.

a. Deemed Beneficial Ownership. Please state the amount of securities of the Company you own on the date you complete this Questionnaire. (If none, please so state in each case.)

Amount Beneficially Owned[1]	Number of Shares of Common Stock Owned
Please state the number of shares owned by you or by family members, trusts and other organizations with which you have a relationship, and any other shares of which you may be deemed to be the "beneficial owner"[1]:	
Total Shares:	_____
Of such shares:	
Shares as to which you have sole voting power:	_____
Shares as to which you have shared voting power:	_____
Shares as to which you have sole investment power:	_____
Shares as to which you have shared investment power:	_____
Shares which you will have a right to acquire before 60 days after the date you complete this questionnaire through the exercise of options, warrants or otherwise:	_____

Do you have any present plans to exercise options or otherwise acquire, dispose of or to transfer shares of Common Stock of the Company between the date you complete this Questionnaire and the date which is 60 days after the date in which the Registration Statement is filed?

Answer:

If so, please describe.

b. Pledged Securities. If any of such securities have been pledged or otherwise deposited as collateral or are the subject matter of any voting trust or other similar agreement or of any contract providing for the sale or other disposition of such securities, please give the details thereof.

Answer:

c. Disclaimer of Beneficial Ownership. Do you wish to disclaim beneficial ownership[1] of any of the shares reported in response to Item 1(a)?

Answer:

If the answer is "Yes", please furnish the following information with respect to the person or persons who should be shown as the beneficial owner(s)[1] of the shares in question.

Name and Address of Actual Beneficial Owner	Relationship of Such Person To You	Number of Shares Beneficially Owned

d. Shared Voting or Investment Power over Securities. Will any person be deemed to have beneficial ownership over any of the Securities (as such term is defined in the Purchase Agreement) purchased by you pursuant to the Purchase Agreement?

Answer:

If the answer is "Yes", please furnish the following information with respect to the person or persons who should be shown as the beneficial owner(s)[1] of the Securities in question.

Name and Address of Beneficial Owner	Relationship of Such Person To You	Number of Shares Beneficially Owned

Item 2. Major Shareholders. Please state below the names of persons or groups known by you to own beneficially[1] more than 5% of the Company's Common Stock.

Answer:

Item 3. Change of Control. Do you know of any contractual arrangements, including any pledge of securities of the Company, the operation of which may at a subsequent date result in a change of control of the Company?

Answer:

Item 4. Relationship with the Company. Please state the nature of any position, office or other material relationship you have, or have had within the past three years, with the Company or its affiliates.

Name	Nature of Relationship

Item 5. Broker-Dealer Status. Is the Investor a broker-dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***")?

¨ Yes
¨ No.

If so, please answer the remaining questions under this Item 5.

Note that the Company will be required to identify any registered broker-dealer as an underwriter in the Registration Statement and related prospectus.

a. If the Investor is a registered broker-dealer, please indicate whether the Investor purchased its Common Stock for investment or acquired them as transaction-based compensation for investment banking or similar services.

Answer:

Note that if the Investor is a registered broker-dealer and received its Common Stock other than as transaction-based compensation, the Company is required to identify the Investor as an underwriter in the Registration Statement and related prospectus.

b. Is the Investor an affiliate of a registered broker-dealer? For purposes of this Question, an "affiliate" of a specified person or entity means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.

¨ Yes.
¨ No.

If so, please answer questions (i)-(iii) below under this Item 5(b).

i. Please describe the affiliation between the Investor and any registered broker-dealers:

ii. If the Common Stock was received by the Investor other than in the ordinary course of business, please describe the circumstances:

iii. If the Investor, at the time of its receipt of Common Stock, has had any agreements or understandings, directly or indirectly, with any person to distribute the Common Stock, please describe such agreements or understandings:

*Note that if the Investor is an affiliate of a broker-dealer and did **not** receive its Common Stock in the ordinary course of business or at the time of receipt had any agreements or understandings, directly or indirectly, to distribute the securities, the Company must identify the Investor as an underwriter in the Registration Statement and related prospectus.*

Item 6. Nature of Beneficial Holding. The purpose of this question is to identify the ultimate natural person(s) or publicly held entity that exercise(s) sole or shared voting or dispositive power over the Registrable Securities.

a. Is the Investor a natural person?

¨ Yes.
¨ No

b. Is the Investor required to file, or is it a wholly owned subsidiary of a company that is required to file, periodic and other reports (for example, Form 10-K, 10-Q, 8-K) with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act?

¨ Yes.
¨ No.

c. Is the Investor an investment company, or a subsidiary of an investment company, registered under the Investment Company Act of 1940, as amended?

¨ Yes.
¨ No.

If a subsidiary, please identify the publicly held parent entity:

d. If you answered "no" to questions (a), (b) and (c) above, please identify the controlling person(s) of the Investor (the "***Controlling Entity***"). If the Controlling Entity is not a natural person or a publicly held entity, please identify each controlling person(s) of such Controlling Entity. This process should be repeated until you reach natural persons or a publicly held entity that exercises sole or shared voting or dispositive power over the Registrable Securities:

*****PLEASE NOTE THAT THE SEC REQUIRES THAT THESE NATURAL PERSONS BE NAMED IN THE PROSPECTUS*****

PART II - CERTAIN TRANSACTIONS

Item 7. Transactions with the Company. If you, any of your associates[2], or any member of your immediate family[3] had or will have any direct or indirect material interest in any transactions[4] or series of transactions to which the Company or any of its subsidiaries was a party at any time since January 1, 2023, or in any currently proposed transactions or series of transactions in which the Company or any of its subsidiaries will be a party, in which the amount involved exceeds $120,000, please specify (a) the names of the parties to the transaction(s) and their relationship to you, (b) the nature of the interest in the transaction, (c) the amount involved in the transaction, and (d) the amount of the interest in the transaction. If the answer is "none", please so state.

Answer:

Item 8. Third Party Payments. Please describe any compensation paid to you by a third party pursuant to any arrangement between the Company and any such third party.

Answer:

* * *

The undersigned has reviewed the Plan of Distribution set forth on Exhibit B of the Registration Rights Agreement and does not have a present intention of effecting a sale in a manner not described therein.

_____ Agree _____ Disagree
(If left blank, response will be deemed to be "Agree".)

The undersigned hereby represents that the undersigned is familiar with Interpretation A.65 in the Securities and Exchange Commission, Division of Corporation Finance, Manual of Publicly Available Telephone Interpretations dated July 1997, a copy of which is set forth below, and that the undersigned will comply with all applicable laws in respect of its sales of the Common Stock.

> Securities Act Sections Compliance and Disclosure Interpretations Section 239.10: "An issuer filed a Form S-3 registration statement for a secondary offering of common stock which is not yet effective. One of the selling shareholders wanted to do a short sale of common stock "against the box" and cover the short sale with registered shares after the effective date. The issuer was advised that the short sale could not be made before the registration statement becomes effective, because the shares underlying the short sale are deemed to be sold at the time such sale is made. There would, therefore, be a violation of Section 5 if the shares were effectively sold prior to the effective date."

SIGNATURE

The undersigned understands that the Company anticipates filing the Registration Statement within the time frame set forth in the Registration Rights Agreement. If at any time any of the information set forth in my responses to this Questionnaire has materially changed due to passage of time (other than due to the receipt of the Registrable Securities set forth opposite the undersigned's name in the Schedule of Buyers in the Purchase Agreement), or any development occurs which requires a change in any of my answers, or has for any other reason become incorrect, the undersigned agrees to furnish as soon as practicable to the individual to whom a copy of this Questionnaire is to be sent, as indicated and at the address shown on the first page hereof, any necessary or appropriate correcting information. Otherwise, the Company is to understand that the above information continues to be, to the best of my knowledge, information and belief, complete and correct.

The undersigned understands that the information that the undersigned is furnishing to the Company herein will be used by the Company in the preparation of the Registration Statement.

Name of Investor: _____

Date: _____, 2026

Signature: _____

Print Name: _____

Title (if applicable): _____

Address: _____

_____
Street

_____
Street

_____
City State Zip Code

_____
Telephone Number

_____
Email Address

FOOTNOTES

1. Beneficial Ownership. You are the beneficial owner of a security, as defined in Rule 13d-3 under the Exchange Act, if you, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise have or share: (1) voting power, which includes the power to vote, or to direct the voting of, such security, and/or (2) investment power, which includes the power to dispose, or to direct the disposition of, such security. You are also the beneficial owner of a security if you, directly or indirectly, create or use a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting yourself of beneficial ownership of a security or preventing the vesting of such beneficial ownership.

   You are deemed to be the beneficial owner of a security if you have the right to acquire beneficial ownership of such security at any time within 60 days including, but not limited to, any right to acquire such security through the exercise of any option, warrant or right, (b) through the conversion of a security, or (c) pursuant to the automatic termination of, or the power to revoke a trust, discretionary account, or similar arrangement.

   Ordinarily, shares held in the name of your spouse or minor child should be considered as beneficially owned by you absent special circumstances to indicate that you do not have, as a practical matter, voting power or investment power over such shares. Similarly, absent countervailing facts, securities held in the name of relatives who share your home are to be reported as being beneficially owned by you. In addition, securities held for your benefit in the name of others, such as nominees, trustees and other fiduciaries, securities held by a partnership of which you are a partner, and securities held by a corporation controlled by you should be regarded as beneficially owned by you.

   This definition of beneficial ownership is very broad; therefore, even though you may not actually have or share voting or investment power with respect to securities owned by persons in your family or living in your home, you should include such shares in your beneficial ownership disclosure and may then disclaim beneficial ownership of such securities.

2. Associate. The term “associate”, as defined in Rule 14a-1 under the Exchange Act, means (a) any corporation or organization (other than the Company or any of its majority owned subsidiaries) of which you are an officer or partner or are, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities, (b) any trust or other estate in which you have a substantial beneficial interest or as to which you serve as trustee or in a similar capacity, and (c) your spouse, or any relative of yours or relative of your spouse living in your home or who is a director or officer of the Company or of any subsidiary. The term “relative of yours” as used in this Questionnaire refers to any relative or spouse of yours, or any relative of such spouse, who has the same home as you or who is a director or officer of any subsidiary of the Company.

   Please identify your associate referred to in your answer and indicate your relationship.

3. Immediate Family. The members of your “immediate family” are deemed to include the following: your spouse; your parents; your children; your siblings; your mother-in-law or father-in-law; your sons- and daughters-in- law; and your brothers- and sisters-in-law.

4. Transactions. The term “transaction” is to be understood in its broadest sense, and includes the direct or indirect receipt of anything of value. Please note that indirect as well as direct material interests in transactions are to be disclosed. Transactions in which you would have a direct interest would include your purchasing or leasing anything (stock in a business acquired by the Company, office space, plants, Company apartments, computers, raw materials, finished goods, etc.) from or selling or leasing anything to, or borrowing or lending cash or other property from or to, the Company, or any subsidiary.

EXHIBIT B
SELLING STOCKHOLDERS

The shares of common stock being offered by the selling stockholders are those issuable to the selling stockholders upon conversion of the preferred shares and upon exercise of the warrants. For additional information regarding the issuance of the preferred shares and the warrants, see "Private Placement of Preferred Shares and Warrants" above. We are registering the shares of common stock in order to permit the selling stockholders to offer the shares for resale from time to time. Except for the ownership of the preferred shares and the warrants issued pursuant to the Securities Purchase Agreement, the selling stockholders have not had any material relationship with us within the past three years.

The table below lists the selling stockholders and other information regarding the beneficial ownership (as determined under Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder) of the shares of common stock held by each of the selling stockholders. The second column lists the number of shares of common stock beneficially owned by the selling stockholders, based on their respective ownership of shares of common stock, preferred shares and warrants, as of _____, 202_, assuming conversion of the preferred shares and exercise of the warrants held by each such selling stockholder on that date but taking account of any limitations on conversion and exercise set forth therein.

The third column lists the shares of common stock being offered by this prospectus by the selling stockholders and does not take into account any limitations on conversion of the preferred shares or exercise of the warrants set forth therein.

In accordance with the terms of a registration rights agreement with the holders of the preferred shares and the warrants, this prospectus generally covers (i) the resale of 100% of the maximum number of shares of common stock issued or issuable pursuant to Certificate of Designations (with the maximum number of shares of common stock issued determined as if the outstanding preferred shares were converted in full (without regard to any limitations on conversion contained therein solely for the purpose of such calculation) at a conversion price calculated as of the trading day immediately preceding the date this registration statement was initially filed with the SEC) and (ii) the maximum number of shares of common stock issued or issuable upon exercise of the warrants (determined as if the outstanding warrants were exercised in full, without regard to any limitations on exercise contained therein solely for the purpose of such calculation). Because the conversion price of the preferred shares and the number of shares issuable upon exercise of the warrants may be adjusted, the number of shares that will actually be issued may be more or less than the number of shares being offered by this prospectus. The fourth column assumes the sale of all of the shares offered by the selling stockholders pursuant to this prospectus.

Under the terms of the preferred shares and the warrants, a selling stockholder may not convert the preferred shares or exercise the warrants to the extent (but only to the extent) such selling stockholder or any of its affiliates would beneficially own a number of shares of our common stock which would exceed [4.99][9.99]% of the outstanding shares of the Company. The number of shares in the second column reflects these limitations. The selling stockholders may sell all, some or none of their shares in this offering. See "Plan of Distribution."

Name of Selling Stockholder	Number of Shares of Common Stock Owned Prior to Offering	Maximum Number of Shares of Common Stock to be Sold Pursuant to this Prospectus	Number of Shares of Common Stock Owned After Offering

PLAN OF DISTRIBUTION

We are registering the shares of common stock issuable upon conversion of the preferred shares and upon exercise of the warrants to permit the resale of these shares of common stock by the holders of the preferred shares and the warrants from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of common stock, although we will receive the exercise price of any Warrants not exercised by the selling stockholder on a cashless basis. We will bear all fees and expenses incident to our obligation to register the shares of common stock.

The selling stockholders may sell all or a portion of the shares of common stock held by them and offered hereby from time to time directly or through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions. The shares of common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions, pursuant to one or more of the following methods:

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- through the writing or settlement of options, whether such options are listed on an options exchange or otherwise;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales made after the date the Registration Statement is declared effective by the SEC;
- broker-dealers may agree with a selling security holder to sell a specified number of such shares at a stipulated price per share;

- a combination of any such methods of sale; and

- any other method permitted pursuant to applicable law.

The selling stockholders may also sell shares of common stock under Rule 144 promulgated under the Securities Act of 1933, as amended, if available, rather than under this prospectus. In addition, the selling stockholders may transfer the shares of common stock by other means not described in this prospectus. If the selling stockholders effect such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling stockholders or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be in excess of those customary in the types of transactions involved). In connection with sales of the shares of common stock or otherwise, the selling stockholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the shares of common stock in the course of hedging in positions they assume. The selling stockholders may also sell shares of common stock short and deliver shares of common stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling stockholders may also loan or pledge shares of common stock to broker-dealers that in turn may sell such shares.

The selling stockholders may pledge or grant a security interest in some or all of the preferred shares or shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending, if necessary, the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer and donate the shares of common stock in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

To the extent required by the Securities Act and the rules and regulations thereunder, the selling stockholders and any broker-dealer participating in the distribution of the shares of common stock may be deemed to be “underwriters” within the meaning of the Securities Act, and any commission paid, or any discounts or concessions allowed to, any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act. At the time a particular offering of the shares of common stock is made, a prospectus supplement, if required, will be distributed, which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling stockholders and any discounts, commissions or concessions allowed or re-allowed or paid to broker-dealers.

Under the securities laws of some states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that any selling stockholder will sell any or all of the shares of common stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling stockholders and any other person participating in such distribution will be subject to applicable provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, including, without limitation, to the extent applicable, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the selling stockholders and any other participating person. To the extent applicable, Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock pursuant to the registration rights agreement, estimated to be $[ ] in total, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or "blue sky" laws; provided, however, a selling stockholder will pay all underwriting discounts and selling commissions, if any. We will indemnify the selling stockholders against liabilities, including some liabilities under the Securities Act in accordance with the registration rights agreements or the selling stockholders will be entitled to contribution. We may be indemnified by the selling stockholders against civil liabilities, including liabilities under the Securities Act that may arise from any written information furnished to us by the selling stockholder specifically for use in this prospectus, in accordance with the related registration rights agreements or we may be entitled to contribution.

Once sold under the registration statement, of which this prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

Exhibit 10.6

Execution Version
Privileged & Confidential – Subject to Further Review

AMENDED AND RESTATED VENTURE LOAN AND SECURITY AGREEMENT

Dated as of October 30, 2026
(the "Effective Date")

by and among

HORIZON TECHNOLOGY FINANCE CORPORATION,
a Delaware corporation
312 Farmington Avenue
Farmington, CT 06032

as Collateral Agent and Lender

And

the other Lenders party hereto

And
the Existing Co-Borrowers under the Original Loan Agreement

PELTHOS THERAPEUTICS INC.,
a Nevada corporation,
4020 Stirrup Creek Drive, Suite 110
Durham, NC 27703
as Borrower Representative and an Existing Co-Borrower

LNHC, INC.,
a Delaware corporation,
4020 Stirrup Creek Drive, Suite 110
Durham, NC 27703
as an Existing Co-Borrower

CHANNEL PHARMACEUTICAL CORPORATION,
a Nevada corporation,
4020 Stirrup Creek Drive, Suite 110
Durham, NC 27703
as an Existing Co-Borrower

And
in addition to the Existing Co-Borrowers, the additional Co-Borrowers as of the Effective Date (collectively, the "Effective Date Co-Borrowers")

CREDIT CARD MERGER SUB, INC.,
a Delaware corporation ("Castle Creek Merger Sub"),
c/o Pelthos Therapeutics Inc.
4020 Stirrup Creek Drive, Suite 110
Durham, NC 27703
as a First Merger Co-Borrower

CREDIT CARD MERGER SUB II, LLC,
a Delaware limited liability company ("Castle Creek Merger Sub II"),
c/o Pelthos Therapeutics Inc.
4020 Stirrup Creek Drive, Suite 110
Durham, NC 27703
as a First Merger Co-Borrower

And

in addition to the Effective Date Co-Borrowers, the additional Co-Borrower as of the closing of the Second Merger in accordance with Section 1.3 of the Castle Creek Merger Agreement (the "Second Merger Co-Borrower" and, together with the Effective Date Co-Borrowers, the "Co-Borrowers")

CASTLE CREEK BIOSCIENCES, LLC
a Delaware limited liability company ("Castle Creek Sub"),
405 Eagleview Boulevard
Exton, PA 19341
as a Second Merger Co-Borrower

Loan A [Tr1] Commitment Amount: $10,000,000	Loan A Commitment Termination Date: January 12, 2026
Loan B [Tr1] Commitment Amount: $10,000,000	Loan B Commitment Termination Date: January 12, 2026
Loan C [Tr1] Commitment Amount: $5,000,000	Loan C Commitment Termination Date: January 12, 2026
Loan D [Tr1] Commitment Amount: $5,000,000	Loan D Commitment Termination Date: January 12, 2026
Loan E [Tr2] Commitment Amount: $2,500,000	Loan E Commitment Termination Date: the Effective Date
Loan F [Tr2] Commitment Amount: $2,500,000	Loan F Commitment Termination Date: the Effective Date
Loan G [Tr3] Commitment Amount: $2,500,000	Loan G Commitment Termination Date: the Effective Date
Loan H [Tr3] Commitment Amount: $2,500,000	Loan H Commitment Termination Date: the Effective Date
Loan I [Tr4] Commitment Amount: $5,000,000	Loan I Commitment Termination Date: December 31, 2027
Loan J [Tr4] Commitment Amount: $5,000,000	Loan J Commitment Termination Date: December 31, 2027

RECITALS

THIS AMENDED AND RESTATED VENTURE LOAN AND SECURITY AGREEMENT, dated as of the Effective Date, by and among PELTHOS THERAPEUTICS INC., a Nevada corporation ("Borrower Representative" or "Pelthos"), LNHC, INC., a Delaware corporation ("LNHC"), and CHANNEL PHARMACEUTICAL CORPORATION, a Nevada corporation ("Channel Pharmaceutical" and, together with Borrower Representative and LNHC, the "Existing Co-Borrowers"), the other Lenders party hereto, and HORIZON TECHNOLOGY FINANCE CORPORATION, a Delaware corporation ("Horizon"), as a Lender and as Collateral Agent, are parties to that certain Venture Loan and Security Agreement, dated as of January 12, 2026 (as amended, restated, supplemented or otherwise modified from time to time prior to the Effective Date, the "Original Loan Agreement"), pursuant to which, among other things:

(a) Horizon made Loan A to the Existing Co-Borrowers in the original principal amount of Ten Million Dollars ($10,000,000), which loan is evidenced by a certain Secured Promissory Note (Loan A) in the original principal amount of Ten Million Dollars ($10,000,000), as assigned by Horizon to Horizon Funding I, LLC ("Horizon Funding I");

(b) Horizon made Loan B in the original principal amount of Ten Million Dollars ($10,000,000), which loan is evidenced by a certain Secured Promissory Note (Loan B) in the original principal amount of Ten Million Dollars ($10,000,000), as assigned by Horizon to Horizon Funding II, LLC ("Horizon Funding II");

(c) Horizon made Loan C in the original principal amount of Five Million Dollars ($5,000,000), which loan is evidenced by a certain Secured Promissory Note (Loan C) in the original principal amount of Five Million Dollars ($5,000,000), as assigned by Horizon to Horizon Credit II LLC ("Horizon Credit II");

(d) Horizon made Loan D in the original principal amount of Five Million Dollars ($5,000,000), which loan is evidenced by a certain Secured Promissory Note (Loan D) in the original principal amount of Five Million Dollars ($5,000,000), as assigned by Horizon to Horizon Credit II (the promissory notes referenced in (a)-(d), collectively, the "Existing Notes");

(e) Horizon agreed, in its sole and absolute discretion and subject to the satisfaction of certain conditions (including the achievement of specified levels of Trailing Twelve-Month Net Revenue), to make Loan E, Loan F, Loan G and Loan H to the Existing Co-Borrowers, none of which has been funded as of the Effective Date; and

(f) each Existing Co-Borrower granted Collateral Agent and Lenders a security interest in the Collateral (as defined in the Original Loan Agreement).

WHEREAS, immediately prior to giving effect to this Agreement and the transactions contemplated hereby, the outstanding principal amount of the Loans under the Original Loan Agreement was Thirty Million Dollars ($30,000,000).

WHEREAS, Borrower Representative has formed Credit Card Merger Sub, Inc., a Delaware corporation ("Castle Creek Merger Sub") and Credit Card Merger Sub II, LLC, a Delaware limited liability company ("Castle Creek Merger Sub II"), each as a wholly-owned subsidiary of Borrower Representative.

WHEREAS, Borrower Representative, Castle Creek Merger Sub, Castle Creek Merger Sub II, Castle Creek Biosciences, Inc., a Delaware corporation ("Castle Creek"), and Paragon Biosciences, LLC, a Delaware limited liability company, as the Securityholder Representative, have entered into that certain Agreement and Plan of Merger, dated on or about the date hereof (the "Castle Creek Merger Agreement"), a copy of which is attached hereto as Exhibit H.

WHEREAS, pursuant to the Castle Creek Merger Agreement, among other things, (i) Castle Creek Merger Sub will merge with and into Castle Creek, with Castle Creek being the surviving corporation following such first merger as a wholly-owned Subsidiary of Borrower Representative (the "First Merger") and (ii) immediately following the First Merger, Castle Creek, as the surviving corporation following the First Merger, will merge with and into Castle Creek Merger Sub II, with Castle Creek Merger Sub II being the surviving company following such second merger as a wholly-owned Subsidiary of Borrower Representative (the "Second Merger" and, together with the First Merger, the "Castle Creek Mergers").

WHEREAS, certain investors in Castle Creek propose to provide the Castle Creek Bridge Financing to Castle Creek; provided that, upon the closing of the Castle Creek Mergers, the investors in the Castle Creek Bridge Financing will transfer and assign all notes issued under the Castle Creek Bridge Financing to Borrower Representative in consideration for preferred shares of the Borrower Representative and upon receipt of such preferred shares, all obligations under the Castle Creek Bridge Financing shall be discharged and cancelled in whole.

WHEREAS, Castle Creek, as Borrower Representative and a Co-Borrower, and Castle Creek Sub, as a Co-Borrower, are parties to that certain Venture Loan and Security Agreement, dated as of February 24, 2025, with Horizon, as Collateral Agent and lender (as amended, restated, supplemented or otherwise modified from time to time, the "Castle Creek Loan Agreement").

WHEREAS, in connection with the transactions contemplated by the Castle Creek Merger Agreement, all obligations outstanding under each of the Castle Creek Loan Agreement and the Innovator Seller Notes are to be paid in full, and the Transaction Closing Costs are to be paid, in each case by or on behalf of Castle Creek no later than the Castle Creek Joinder Date in accordance with the Mergers Funds Flow Memorandum.

WHEREAS, in accordance with the Original Loan Agreement, the Loan E Commitment Termination Date and the Loan F Commitment Termination Date occurred on September 30, 2026 without Loan E or Loan F having been funded; provided that, notwithstanding the foregoing, the parties desire to extend the Loan E Commitment Termination Date and the Loan F Commitment Termination Date to the Effective Date and to acknowledge the satisfaction of the Trailing Twelve-Month Net Revenue milestones applicable to Loan E, Loan F, Loan G and Loan H.

WHEREAS, Borrower Representative, for itself and on behalf of the other Co-Borrowers, has requested that Collateral Agent and Lenders amend and restate the Original Loan Agreement in order to, among other things, (i) provide for the funding in full on the Effective Date of Loan E, Loan F, Loan G and Loan H, and (ii) consent to the Castle Creek Mergers. Collateral Agent and Lenders are willing to grant such requests, but only to the extent, and in accordance with, the terms, and subject to the conditions, set forth herein.

WHEREAS, it is the intent of the parties hereto that this Agreement not constitute a novation of the obligations and liabilities existing under the Original Loan Agreement, which remain outstanding, or evidence repayment of any such obligations and liabilities, and that this Agreement amend and restate in its entirety the Original Loan Agreement and re-evidence the obligations of the Existing Co-Borrowers thereunder as Obligations of the Co-Borrowers under this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lenders, Collateral Agent and Co-Borrowers hereby agree as follows:

AGREEMENT

1. Definitions and Construction.

1.1 Definitions. As used in this Agreement, the following capitalized terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Account Control Agreement" means an agreement acceptable to Lenders which perfects via control Lenders' and Collateral Agent's security interest in each Co-Borrower's deposit accounts and/or securities accounts.

"Affiliate" means, with respect to any Person, any other Person that owns or controls directly or indirectly 25% or more of the stock of another entity of such Person, any other Person that controls or is controlled by or is under common control with such Person and each of such Person's officers, directors, managers, joint venturers or partners. For purposes of this definition, the term "control" of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting Equity Securities, by contract or otherwise and the terms "controlled by" and "under common control with" shall have correlative meanings.

"Agreement" means this certain Amended and Restated Venture Loan and Security Agreement by and among Co-Borrowers, Collateral Agent and Lenders dated as of the Effective Date (as it may from time to time be amended, restated, supplemented or otherwise modified in a writing signed by Co-Borrowers, Collateral Agent and Lenders).

"Allocable Amount" has the meaning given such term in Section 16.7(b) of this Agreement.

"Amendment Commitment Fee" has the meaning given such term in Section 2.6(c) of this Agreement.

"Amendment Good Faith Deposit" has the meaning given such term in Section 2.6(a) of this Agreement.

"Amendment Loans" means, collectively, Loan E, Loan F, Loan G, Loan H, Loan I and Loan J.

"Anti-Terrorism Laws" means any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

"Bankruptcy Code" means the law codified and enacted as Title 11 of the United States Code, entitled "Bankruptcy" and any successor statute thereto, in either case, as now or hereafter in effect.

"Borrower Representative" means the Borrower Representative as set forth on the cover page of this Agreement.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banking institutions are authorized or required to close in New York.

"Castle Creek" has the meaning given such term in the Recitals.

"Castle Creek Assets Intercreditor Agreement" means that certain Amended and Restated Intercreditor Agreement, to be entered into in accordance with Section 6.14(e) no later than the Castle Creek Joinder Date by and among Collateral Agent, on behalf of itself and the Lenders, as first lien agent, Ligand, as second lien agent, and each applicable Co-Borrower, substantially in the form attached hereto as Exhibit I or otherwise in form and substance satisfactory to Lenders in their sole discretion.

"Castle Creek Bridge Financing" means the unsecured convertible bridge financing provided by certain investors in Castle Creek to Castle Creek prior to the Castle Creek Mergers Closing Date, subject to the Castle Creek Bridge Subordination Agreement and evidenced by the Castle Creek Bridge Notes, all of which shall be assigned to Borrower Representative and cancelled on the Castle Creek Mergers Closing Date pursuant to the Castle Creek Bridge Closing Credit.

"Castle Creek Bridge Closing Credit" means, effective as of the Castle Creek Mergers Closing Date and as provided in the Castle Creek Bridge Notes, (a) the assignment of each Castle Creek Bridge Note to Borrower Representative, (b) the crediting of the entire outstanding amount thereof (including all principal and capitalized and accrued interest) against the applicable holder's subscription amount for shares of Series B Convertible Preferred Stock of Borrower Representative ("Series B Preferred Stock") under the securities purchase agreement among Borrower Representative and the investors party thereto entered into in connection with the Castle Creek Merger Agreement, at the purchase price per share thereunder, and (c) the cancellation of such Castle Creek Bridge Note.

"Castle Creek Bridge Lenders" means each holder from time to time of any Castle Creek Bridge Note.

"Castle Creek Bridge Notes" means the unsecured convertible promissory notes issued by Castle Creek prior to the Castle Creek Mergers Closing Date, substantially in the form provided to Lenders prior to the Effective Date.

"Castle Creek Bridge Subordination Agreement" means one or more payment subordination agreements, each dated as of the date of issuance of the Castle Creek Bridge Note, by and among Collateral Agent, on behalf of itself and the Lenders, each Castle Creek Bridge Lender, and acknowledged by Castle Creek and Castle Creek Sub, on terms and conditions acceptable to Lenders in their sole discretion, which subordinate and prohibit the payment of any amounts under the Castle Creek Bridge Financing at any time prior to the repayment in full of the Castle Creek Loan Payoff Amount.

"Castle Creek Closing Payments" means, collectively, (a) the Castle Creek Loan Payoff Amount, (b) the Innovator Seller Note Payoff Amount and (c) the Transaction Closing Costs, in each case as set forth in the Mergers Funds Flow Memorandum.

"Castle Creek Contingent Consideration" means all obligations of Borrower Representative, Castle Creek Merger Sub II (as the "Surviving Company" under the Castle Creek Merger Agreement) and their respective successors under Article IX of the Castle Creek Merger Agreement (as in effect on the Effective Date or as amended in accordance with Section 6.14(a)), including the obligations to (a) pay the Milestone Payments (as defined in the Castle Creek Merger Agreement), together with any late payment interest thereon, (b) issue Contingent Shares and Adjustment Contingent Shares (each as defined in the Castle Creek Merger Agreement), or pay or deliver any Contingent Consideration Equivalent (as defined in the Castle Creek Merger Agreement) in lieu thereof, (c) pay the PRV Interest (as defined in the Castle Creek Merger Agreement), (d) pay Contingent Expenses (as defined in the Castle Creek Merger Agreement) and (e) perform the related diligence, reporting, notice, record-keeping, audit and other covenants set forth in such Article IX.

"Castle Creek Joinder Date" has the meaning given such term in Section 6.14(c) of this Agreement.

"Castle Creek Loan Agreement" has the meaning given such term in the Recitals.

"Castle Creek Loan Payoff Amount" means the amount necessary to pay in full all Obligations (as defined in the Castle Creek Loan Agreement) outstanding under the Castle Creek Loan Agreement and the other Loan Documents (as defined therein) as of the Castle Creek Mergers Closing Date but providing per diem amounts through the Castle Creek Mergers Outside Date, as set forth in the Castle Creek Payoff Letter and the Mergers Funds Flow Memorandum.

"Castle Creek Merger Agreement" has the meaning given such term in the Recitals.

"Castle Creek Merger Consent" has the meaning given such term in Section 7.6 of this Agreement.

"Castle Creek Merger Sub" has the meaning given such term in the Recitals.

"Castle Creek Merger Sub II" has the meaning given such term in the Recitals.

"Castle Creek Mergers" has the meaning given such term in the Recitals.

"Castle Creek Mergers Closing Date" means the "*Closing Date*" as defined under Section 1.3 of the Castle Creek Merger Agreement.

"Castle Creek Mergers Outside Date" means March 31, 2027, or such later date as Lenders may agree in writing in their sole discretion.

"Castle Creek Payoff Letter" means a payoff letter, dated on or about the Castle Creek Mergers Closing Date, in form and substance reasonably satisfactory to Lenders, with respect to the Castle Creek Loan Agreement.

"Castle Creek Purchased Assets Agreement" means that certain Purchase and Sale Agreement dated as of February 24, 2025 by and among Castle Creek Sub and Castle Creek as seller parties, certain entities from time to time party thereto as purchasers and Ligand, as purchaser representative thereunder.

"Castle Creek Royalty Financing Documents" means, collectively, the Castle Creek Purchased Assets Agreement, the Pledge and Security Agreement, dated as of February 24, 2025, made by Castle Creek and Castle Creek Sub in favor of Ligand, as Purchaser Representative (as defined therein), and the other Transaction Documents (as defined in the Castle Creek Purchased Assets Agreement), in each case as in effect on the Effective Date, and as further amended, modified and supplemented from time to time in compliance with the Castle Creek Assets Intercreditor Agreement.

"Castle Creek Sub" has the meaning given such term in the Recitals.

"Channel Assets Intercreditor Agreement" means that certain Intercreditor Agreement, dated on or about the Original Closing Date, by and among Horizon on behalf of itself as Collateral Agent and on behalf of the Lenders, Ligand, Nomis, Madison and each Co-Borrower.

"Channel Assets Purchase and Sale Agreement" means that certain Purchase and Sale Agreement, dated as of July 1, 2025, by and among Channel Pharmaceutical and Borrower Representative (as successor in interest to Channel Therapeutics), as the Seller Parties (as defined therein), and Ligand, Nomis and Madison, as Purchasers (as defined therein), as amended as of the Original Closing Date, and as further amended, modified and supplemented from time to time in compliance with the Channel Assets Intercreditor Agreement.

"Channel Pharmaceutical" means Channel Pharmaceutical Corporation, a Nevada corporation and wholly-owned subsidiary of Borrower Representative; provided however that subsequent to any Transfer contemplated by Section 7.4(o) of this Agreement, Borrower Representative may own less than 50% of the Equity Securities of Channel Pharmaceutical.

"Channel Therapeutics" means Channel Therapeutics Corporation, a Nevada corporation and predecessor in interest to Borrower Representative.

"Chromocell" means Channel Pharmaceutical Corporation Pty Ltd f/k/a Chromocell Therapeutics Australia Pty Ltd, an Australian proprietary limited company.

"Claim" has the meaning given such term in Section 10.3 of this Agreement.

"Co-Borrower" means, individually and/or collectively, as the context requires, (i) immediately prior to the Effective Date, the Existing Co-Borrowers, (ii) on and after the Effective Date, the Effective Date Co-Borrowers (including the Existing Co-Borrowers), (iii) upon consummation of the Second Merger, the Second Merger Co-Borrower (including the Effective Date Co-Borrowers) and (iv) any other entity that may, from time to time, be added as a Co-Borrower to this Agreement. All obligations, representations and covenants herein and in other Loan Documents to which any Co-Borrower is a party, shall be joint and several unless otherwise explicitly stated herein.

"Code" means the Uniform Commercial Code as adopted and in effect in the State of New York, as amended from time to time; provided that if by reason of mandatory provisions of law, the creation and/or perfection or the effect of perfection or non-perfection of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "Code" shall also mean the Uniform Commercial Code as in effect from time to time in such jurisdiction for purposes of the provisions hereof relating to such creation, perfection or effect of perfection or non-perfection.

"Collateral" has the meaning given such term in Section 4.1 of this Agreement.

"Collateral Agent" means Horizon, or any successor collateral agent appointed by Lenders.

"Commitment Amount" means the Loan A Commitment Amount, the Loan B Commitment Amount, the Loan C Commitment Amount, the Loan D Commitment Amount, the Loan E Commitment Amount, the Loan F Commitment Amount, the Loan G Commitment Amount, the Loan H Commitment Amount, the Loan I Commitment Amount and the Loan J Commitment Amount, as applicable.

"Commitment Fee" has the meaning given such term in Section 2.6(c) of this Agreement.

"Competitor" means any Person set forth on Exhibit G attached hereto, as such exhibit may be amended by Borrower Representative from time to time with Lenders' consent, not to be unreasonably withheld, conditioned or delayed.

"Consolidated" means the consolidation of accounts in accordance with GAAP.

"Default" means any event which with the passing of time or the giving of notice or both would become an Event of Default hereunder.

"Default Rate" means the per annum rate of interest equal to four percent (4%) over the Loan Rate, but such rate shall in no event be more than the highest rate permitted by applicable law to be charged on commercial loans in a default situation.

"Disclosed Affiliate Transactions" has the meaning given such term in Section 7.8 of this Agreement.

"Disclosure Schedule" means Exhibit A attached hereto.

"Disqualified Institution" means any (a) Competitor, (b) Person set forth on Exhibit F attached hereto, or (c) an Affiliate of any Person referred to in clause (a) or (b) above.

"Effective Date" has the meaning set forth on the cover page of this Agreement.

"Effective Date Co-Borrowers" means the Existing Co-Borrowers, together with Castle Creek Merger Sub and Castle Creek Merger Sub II.

"Environmental Laws" means all foreign, federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health, safety and land use matters, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act and the Emergency Planning and Community Right-to-Know Act.

"Equity Securities" of any Person means (a) all common stock, preferred stock, participations, shares, partnership interests, membership interests or other equity interests in and of such Person (regardless of how designated and whether or not voting or non-voting) and (b) all warrants, options and other rights to acquire any of the foregoing.

"ERISA" has the meaning given to such term in Section 7.12 of this Agreement.

"Event of Default" has the meaning given to such term in Section 8 of this Agreement.

"Excluded Accounts" means (a) any account used for payroll, payroll taxes, withholding and other employee wage and benefit payments to or for the benefit of any Co-Borrower's or any of its Subsidiaries' employees or contractors, so long as such account is a zero balance account or is funded no earlier than the Business Day immediately prior to the date of any payroll disbursements and in an amount not exceeding the same, (b) any account constituting a zero balance account, (c) any account constituting a trust account, escrow account, fiduciary account (including any customer reserve or deposit account), and other accounts solely holding funds on account of, or for the benefit of, third parties that are not Affiliates (other than any Affiliates who are royalty purchasers under any Purchase and Sale Agreement, as applicable) (including any cash collateral account that is subject to Permitted Liens), so long as such account is a zero balance account or is funded no earlier than the Business Day immediately prior to the date of any disbursements and in an amount not exceeding the same, (d) petty cash accounts, amounts on deposit in which do not exceed $100,000 in the aggregate at any one time, (e) accounts to secure Co-Borrowers' credit cards, amounts on deposit in which do not exceed $250,000 in the aggregate, (f) withholding tax and fiduciary accounts, (g) if or when established pursuant to Section 6.4 of the Zelsuvmi Purchase and Sale Agreement, the Royalty Holder Collection Account (as defined and when established therein), (h) if or when established pursuant to Section 6.4 of the Channel Assets Purchase and Sale Agreement, the Royalty Holder Collection Account (as defined and when established therein), and (i) if or when established pursuant to Section 2.4 of the Castle Creek Purchased Assets Agreement, the Collection Account (as defined therein).

"Excluded Equity" means the Equity Securities of Chromocell.

"Excluded Property" means, collectively:

(a) (i) Excluded Equity; (ii) each permit, license and other contractual obligation entered into by any Co-Borrower or any Subsidiary of a Co-Borrower (A) that prohibits or requires the consent of any Person other than a Co-Borrower and its Affiliates which has not been obtained as a condition to the creation by such Co-Borrower or Subsidiary of a Lien on any right, title or interest in such permit, license or contractual obligation or any Equity Securities related thereto or (B) to the extent that any requirement of law applicable thereto prohibits the creation of a Lien thereon, but only, with respect to the prohibition in (A) and (B), to the extent, and for as long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other requirement of law; (iii) property owned by any Co-Borrower or any Subsidiary of a Co-Borrower that is subject to a purchase money Lien or a capital lease permitted under this Agreement if the contractual obligation pursuant to which such Lien is granted (or in the document providing for such capital lease) prohibits or requires the consent of any Person other than a Co-Borrower and its Affiliates which has not been obtained as a condition to the creation of any other Lien on such equipment; (iv) the Excluded Accounts described in sub-parts (g), (h) and (i) of the definition thereof; (v) those assets as to which the Collateral Agent and the Borrower Representative agree that the burden or cost or other consequences (including any material adverse tax consequences) of obtaining a security interest therein would be excessive in view of the practical benefits to be obtained by the Secured Parties therefrom; (vi) any owned or leased real property; (vii) Equity Securities in any entity other than wholly-owned Subsidiaries to the extent not permitted by the terms of such entity's organizational or joint venture documents (unless any such restriction would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408, 9-409 or other applicable provisions of the UCC of any relevant jurisdiction or any other applicable law), (viii) assets subject to certificates of title to the extent that security interests in such assets cannot be perfected by the filing of UCC financing statements or PPSA financing statements, (ix) any lease, license or other agreement, in each case to the extent permitted under this Agreement or any property subject thereto to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or create a right of termination in favor of any other party thereto (other than a Co-Borrower) (unless any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408, 9-409 or other applicable provisions of the UCC of any relevant jurisdiction or any other applicable law); provided that, immediately upon the ineffectiveness, lapse or termination of any such term, such assets shall automatically cease to constitute Excluded Property, or (x) any "intent-to-use" application for registration of a trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law;

(b) the "Purchased Receivables" (as such term is defined in the Zelsuvmi Purchase and Sale Agreement) and all proceeds thereof;

(c) the "Purchased Receivables" (as such term is defined in the Channel Assets Purchase and Sale Agreement) and all proceeds thereof;

(d) the "Assigned Rights" and "Sales Royalties" (as each such term is defined in the Reedy Creek Purchase and Sale Agreement) and all proceeds thereof;

(e) the "Royalty Interest Right" and the "Sato Payment" (as such terms are defined in the Xepi Purchase and Sale Agreement) and all proceeds thereof; and

(f) the "Purchased Receivables" (as such term is defined in the Castle Creek Purchased Assets Agreement) and all proceeds thereof;

provided however, "Excluded Property" described in clause (a) above shall not include any proceeds, products, substitutions or replacements of Excluded Property (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

"Excluded Subsidiary" means Chromocell.

"Excluded Taxes" means any of the following taxes imposed on or with respect to a Lender or required to be withheld or deducted from a payment to a Lender, (a) taxes imposed on or measured by net income (however denominated), franchise taxes, and branch profits taxes, in each case, (i) imposed as a result of such Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such tax (or any political subdivision thereof) or (ii) that are taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document), (b) U.S. federal withholding taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.4(c), amounts with respect to such taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) taxes attributable to such Lender's failure to comply with Section 2.4(c)(iv), and (d) any withholding taxes imposed under FATCA.

"Existing Co-Borrowers" has the meaning given such term in the Recitals.

"Existing Notes" has the meaning given such term in the Recitals.

"FATCA" has the meaning given to such term in Section 2.4(c)(iv) of this Agreement.

"Ferrer License" means that certain License and API Supply Agreement, dated as of November 6, 2025, by and between Pelthos and Ferrer Internacional, S.A., and Interquim, S.A.U.

"First Merger" has the meaning given such term in the Recitals.

"Funding Certificate" means a certificate executed by a duly authorized Responsible Officer of Borrower Representative substantially in the form of Exhibit B or such other form as Lenders may agree to accept.

"Funding Date" means any date on which a Loan is made to or on account of any Co-Borrower under this Agreement.

"GAAP" means generally accepted accounting principles as in effect in the United States of America from time to time, consistently applied.

"Governmental Authority" means (a) any federal, state, county, municipal or foreign government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court or administrative tribunal, or (d) with respect to any Person, any arbitration tribunal or other non-governmental authority to whose jurisdiction that Person has consented.

"Guarantor Payment" has the meaning given such term in Section 16.7(a) of this Agreement.

"Hazardous Materials" means all those substances which are regulated by, or which may form the basis of liability under, any Environmental Law, including all substances identified under any Environmental Law as a pollutant, contaminant, hazardous waste, hazardous constituent, special waste, hazardous substance, hazardous material, or toxic substance, or petroleum or petroleum derived substance or waste.

"Horizon" means Horizon Technology Finance Corporation, a Delaware corporation.

"Indebtedness" means, with respect to any Person, the aggregate amount of, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade payables aged less than one hundred eighty (180) days and customary working capital and similar purchase price adjustments and purchase price holdbacks), (d) all capital lease obligations of such Person, (e) [reserved], (f) all obligations or liabilities of others guaranteed by such Person, whether unsecured or secured by a Lien on any asset of such Person, (g) all obligations or liabilities incurred by such Person, including, without limitation, any amounts paid to such Person, pursuant to such Person's execution of a SAFE, provided that upon the issuance of the Equity Securities to be issued pursuant to such SAFE, such obligations and liabilities shall no longer constitute Indebtedness and (h) any other obligations or liabilities which are required by GAAP to be shown as debt on the balance sheet of such Person; provided, that Indebtedness shall not include (i) accrued expenses, including any accrued and unpaid management fees, and deferred compensation and customary obligations under employment arrangements, (ii) operating leases, (iii) non-royalty license and license pass-through payment obligations, (iv) commercial gross-to-net deductions and related accruals, (v) inventory related minimum purchase commitments or related accruals, or (vi) deferred revenue amounts.

"Indemnified Person" has the meaning given such term in Section 10.3 of this Agreement.

"Indemnified Taxes" means taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of a Co-Borrower under any Loan Document.

"Initial Loan Extended Interest Scheduled Payments" has the meaning given such term in Section 2.2(a) of this Agreement.

"Initial Loan Scheduled Payments" has the meaning given such term in Section 2.2(a) of this Agreement.

"Innovator Seller Note Payoff Amount" means the amount necessary to pay in full all obligations outstanding under the Innovator Seller Notes on the Castle Creek Mergers Closing Date, as set forth in the Innovator Seller Note Payoff Letters and the Mergers Funds Flow Memorandum.

"Innovator Seller Note Payoff Letters" means payoff letters, dated on or about the Castle Creek Mergers Closing Date, in form and substance reasonably satisfactory to Lenders, executed by each holder of an Innovator Seller Note.

"Innovator Seller Notes" means, collectively, (a) that certain Unsecured Subordinated Promissory Note PN-1, dated February 24, 2025, in the original principal amount of $16,666,666.67, and (b) that certain Unsecured Subordinated Promissory Note PN-2, dated February 24, 2025, in the original principal amount of $8,333,333.33, in each case issued by Castle Creek Sub in favor of Innovator 21, LLC (and its permitted registered assigns, including, if applicable, Ligand).

"Intellectual Property" means, with respect to any Person, all of such Person's right, title and interest in and to patents, patent rights (and applications and registrations therefor and divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same), trademarks and service marks (and applications and registrations therefor and the goodwill associated therewith), whether registered or not, inventions, copyrights (including applications and registrations therefor and like protections in each work or authorship and derivative work thereof), whether published or unpublished, mask works (and applications and registrations therefor), trade names, trade styles, software and computer programs, source code, object code, trade secrets, licenses, methods, processes, know how, drawings, specifications, descriptions, and all memoranda, notes, and records with respect to any research and development, all whether now owned or subsequently acquired or developed by such Person and whether in tangible or intangible form or contained on magnetic media readable by machine together with all such magnetic media (but not including embedded computer programs and supporting information included within the definition of "goods" under the Code).

"Intercreditor Agreements" means, collectively, (i) the Channel Assets Intercreditor Agreement, (ii) the Xepi Intercreditor Agreement, (iii) the Zelsuvmi Intercreditor Agreement, and (iv) upon execution of and no later than the Castle Creek Joinder Date, the Castle Creek Assets Intercreditor Agreement.

"Interest Only Extension Milestone" means the achievement of Trailing Twelve-Month Net Revenue of at least $75,000,000.

"Internal Revenue Code" has the meaning given such term in Section 5.20 of this Agreement.

"Investment" means the purchase or acquisition of any capital stock, equity interest, or any obligations or other securities of, or any interest in, any Person, or the extension of any advance, loan, extension of credit or capital contribution to, or any other investment in, or deposit with, any Person.

"IRS" means the United States Internal Revenue Service or any successor agency.

"Landlord Agreement" means an agreement substantially in the form provided by Lenders to Co-Borrowers or such other form as Lenders may agree to accept in their reasonable discretion.

"Lender" means, individually and/or collectively, as the context requires, each Person that is a party hereto as a Lender, as identified on the signature pages hereto, as well as any other entity that may, from time to time, be permitted to be added as Lenders to this Agreement in accordance with Section 12.1 of this Agreement; provided that any Person that has assigned all of its Loans and Commitment Amounts in accordance with Section 12.1 shall cease to be a Lender.

"Lenders' Expenses" means all of Lenders' reasonable and documented costs or expenses (including reasonable and documented attorneys' fees and expenses) incurred in connection with the preparation, negotiation, documentation, drafting, amendment, modification, administration, perfection and funding of the Loan Documents; and all of Lenders' reasonable and documented attorneys' fees, costs and expenses incurred in enforcing or defending the Loan Documents (including reasonable and documented fees and expenses of appeal or review), including the exercise of any rights or remedies afforded hereunder or under applicable law, whether or not suit is brought, whether before or after bankruptcy or insolvency, including all fees and costs incurred by Lenders in connection with such Lenders' enforcement of their rights in a bankruptcy or insolvency proceeding filed by or against any Co-Borrower, any Subsidiary or their respective Property.

"Lien" means any voluntary or involuntary security interest, pledge, bailment, lease, mortgage, hypothecation, conditional sales and title retention agreement, encumbrance or other lien with respect to any Property in favor of any Person.

"Ligand" means Ligand Pharmaceuticals Incorporated, a Delaware corporation.

"Ligand Milestone Subordination Agreement" means that certain Subordination Agreement, dated on or about the Original Closing Date, by and among Lenders, Ligand and each Co-Borrower.

"LNHC" means LNHC, Inc., a Delaware corporation and wholly-owned subsidiary of Borrower Representative.

"Loan" means each advance of credit by each Lender to the Co-Borrowers under this Agreement.

"Loan A" means the advance of credit by Lenders to the Co-Borrowers under this Agreement in the Loan A Commitment Amount.

"Loan A Commitment Amount" has the meaning set forth on the cover page of this Agreement.

"Loan A Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Loan A Final Payment" has the meaning given such term in Section 2.2(g) of this Agreement.

"Loan Amortization Date" means, with respect to each Loan, the Payment Date on which Borrower is required, pursuant to Section 2.2(a) below, to commence making equal payments of principal plus accrued interest on the outstanding principal amount of such Loan.

"Loan B" means the advance of credit by Lenders to the Co-Borrowers under this Agreement in the Loan B Commitment Amount.

"Loan B Commitment Amount" has the meaning set forth on the cover page of this Agreement.

"Loan B Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Loan B Final Payment" has the meaning given such term in Section 2.2(g) of this Agreement.

"Loan C" means the advance of credit by Lenders to the Co-Borrowers under this Agreement in the Loan C Commitment Amount.

"Loan C Commitment Amount" has the meaning set forth on the cover page of this Agreement.

"Loan C Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Loan C Final Payment" has the meaning given such term in Section 2.2(g) of this Agreement.

"Loan D" means the advance of credit by Lenders to the Co-Borrowers under this Agreement in the Loan D Commitment Amount.

"Loan D Commitment Amount" has the meaning set forth on the cover page of this Agreement.

"Loan D Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Loan D Final Payment" has the meaning given such term in Section 2.2(g) of this Agreement.

"Loan Documents" means, collectively, this Agreement, the Notes, the Warrants, the Intercreditor Agreements (including, from and after its execution and delivery, the Castle Creek Assets Intercreditor Agreement), the Subordination Agreements, any Landlord Agreement, any Account Control Agreement, any joinder agreement delivered pursuant to Section 6.14(c), and all other documents, instruments and agreements entered into in connection with this Agreement or the Original Loan Agreement.

"Loan E" means the advance of credit by Lenders to the Co-Borrowers under this Agreement in the Loan E Commitment Amount.

"Loan E Commitment Amount" has the meaning set forth on the cover page of this Agreement.

"Loan E Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Loan E Final Payment" has the meaning given such term in Section 2.2(g) of this Agreement.

"Loan F" means the advance of credit by Lenders to the Co-Borrowers under this Agreement in the Loan F Commitment Amount.

"Loan F Commitment Amount" has the meaning set forth on the cover page of this Agreement.

"Loan F Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Loan F Final Payment" has the meaning given such term in Section 2.2(g) of this Agreement.

"Loan G" means the advance of credit by Lenders to the Co-Borrowers under this Agreement in the Loan G Commitment Amount.

"Loan G Commitment Amount" has the meaning set forth on the cover page of this Agreement.

"Loan G Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Loan G Final Payment" has the meaning given such term in Section 2.2(g) of this Agreement.

"Loan H" means the advance of credit by Lenders to the Co-Borrowers under this Agreement in the Loan H Commitment Amount.

"Loan H Commitment Amount" has the meaning set forth on the cover page of this Agreement.

"Loan H Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Loan H Final Payment" has the meaning given such term in Section 2.2(g) of this Agreement.

"Loan I" means the advance of credit by Lenders to the Co-Borrowers under this Agreement in the Loan I Commitment Amount.

"Loan I Commitment Amount" has the meaning set forth on the cover page of this Agreement.

"Loan I Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Loan I Final Payment" has the meaning given such term in Section 2.2(g) of this Agreement.

"Loan J" means the advance of credit by Lenders to the Co-Borrowers under this Agreement in the Loan J Commitment Amount.

"Loan J Commitment Amount" has the meaning set forth on the cover page of this Agreement.

"Loan J Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Loan J Final Payment" has the meaning given such term in Section 2.2(g) of this Agreement.

"Loan Rate" means, with respect to each Loan, the sum of (a) the per annum rate of interest from time to time published in The Wall Street Journal, or any successor publication thereto, as the "prime rate" then in effect, plus (b) 3.75%; provided that, in the event such "prime rate" of interest is less than 6.75%, such "prime rate" shall be deemed to be 6.75% for purposes of calculating the Loan Rate, provided, further, that if the "prime rate", (i) is no longer reported in The Wall Street Journal, (ii) is no longer widely used as a benchmark market rate for new facilities of this type, or (iii) becomes permanently unavailable, Lenders shall select a successor benchmark rate, which successor rate shall be applied in a manner consistent with market practice, or if there is no consistent market practice, such successor rate shall be applied in a manner reasonably determined by Lenders. Notwithstanding the foregoing, in no event shall the Loan Rate be less than 10.50%. Each Co-Borrower acknowledges that the "prime rate" is used for reference purposes only as an index and is not necessarily the lowest or the best interest rate charged to any borrower of Lenders.

"Madison" means Madison Royalty LLC, a Colorado limited liability company.

"Material Adverse Effect" means a material adverse effect on (a) the condition (financial or otherwise), business, operations, Properties of the Co-Borrowers and their Subsidiaries, taken as a whole, (b) the ability of the Co-Borrowers, taken as a whole, to perform their Obligations under the Loan Documents or (c) the Collateral or Collateral Agent's or Lenders' security interest in the Collateral.

"Material Contract" means, with respect to any Person, all contracts or agreements as to which the breach, nonperformance, cancellation, or failure to renew by any party could reasonably be expected to have a Material Adverse Effect.

"Maturity Date" means, with respect to each Loan, January 31, 2031, or if earlier, the date of acceleration of such Loan following an Event of Default or the date of prepayment, whichever is applicable.

"Mergers Funds Flow Memorandum" means the funds flow memorandum setting forth, among other things, the sources (including proceeds of the Amendment Loans and any other cash on the balance sheet of the Co-Borrowers) and uses of funds and the amount, payee and wire instructions for each Castle Creek Closing Payment, in form and substance approved by Lenders and Borrower Representative and attached hereto as Schedule 1 – Funds Flow, as updated by Borrower Representative at or prior to the Castle Creek Mergers Closing Date, with prior written notice to, and review and approval in their reasonable discretion by, Lenders.

"Net Revenue" means the Co-Borrowers' and their Subsidiaries' Consolidated revenue (as determined in accordance with GAAP), less customary contractual, regulatory and commercial deductions approved by Lenders in their reasonable discretion for co-pay assistance programs, wholesaler distribution fees, mandatory government payor rebates (including Medicare, Public Health Services, and Tricare), any commercial insurance rebates and product returns.

"Nomis" means Nomis Royaltyvest LLC, a Delaware limited liability company.

"Note" means each promissory note executed in connection with a Loan in substantially the form of Exhibit C attached hereto, including each Existing Note.

"Novan" means Novan, Inc., a Delaware corporation.

"Obligations" means all debt, principal, interest, fees, charges, expenses and attorneys' fees and costs and other amounts, obligations, covenants, and duties owing by any Co-Borrower to Collateral Agent or Lenders of any kind and description (whether pursuant to or evidenced by the Loan Documents (other than the Warrants), or by any other agreement between Lenders and any Co-Borrower (other than the Warrants), and whether or not for the payment of money), whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all Lenders' Expenses.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Officer's Certificate" means a certificate executed by a Responsible Officer substantially in the form of Exhibit E or such other form as Lenders may agree to accept.

"Original Closing Date" means January 12, 2026, the date of the Original Loan Agreement.

"Original Loan Agreement" has the meaning given such term in the Recitals.

"Payment Date" has the meaning given such term in Section 2.2(a) of this Agreement.

"Pelthos" means Pelthos Therapeutics Inc., a Nevada corporation, in its individual capacity and as Borrower Representative.

"Permitted Acquisition" means an acquisition of the Equity Securities of another Person, or assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person, by a Co-Borrower or any of their Subsidiaries (the Person or division, line of business or other business unit of the Person to be acquired in such acquisition shall be referred to herein as the "Target"), in each case that is a type of business (or assets used in a type of business) permitted to be engaged in by the Co-Borrowers and their Subsidiaries pursuant to the terms of this Agreement, in each case so long as:

(a) no Event of Default shall then exist or would exist after giving effect thereto;

(b) the Collateral Agent shall have received (or shall receive in connection with the closing of such Permitted Acquisition) a perfected security interest, to extent required by this Agreement, in all property constituting Collateral acquired with respect to the Target in accordance with the terms hereof and the Target, if a Person, shall have executed a joinder agreement in accordance with, and to the extent required by, this Agreement;

(c) the Collateral Agent and the Lenders shall have received not less than ten (10) days (or such shorter period as the Collateral Agent may reasonably agree) prior to the consummation of any such Permitted Acquisition (x) a description of the material terms of such Permitted Acquisition, (y) audited financial statements (or, if unavailable, management-prepared financial statements) of the Target for its two most recent fiscal years and for any fiscal quarters ended within the fiscal year to date, and (z) for the ensuing four (4) fiscal quarters after such Permitted Acquisition, Consolidated projected income statements of the Co-Borrowers and their Subsidiaries (giving effect to such Permitted Acquisition);

(d) the business acquired in connection with such Permitted Acquisition is not engaged, directly or indirectly, in any line of business other than the businesses in which the Co-Borrowers are engaged on the Effective Date or any business activities that are substantially similar, related, or incidental thereto;

(e) no Co-Borrower shall, as a result of or in connection with any such Permitted Acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation, or other matters) that could have a Material Adverse Effect;

(f) such Permitted Acquisition shall not be a "hostile" acquisition and shall have been approved by the board of directors (or equivalent) and/or shareholders (or equivalent) of the applicable Co-Borrower and the Target; and

(g) with respect to any such Permitted Acquisition of assets that do not become Collateral or of any equity interests of an entity that does not become a Co-Borrower hereunder, the aggregate purchase price consideration of all such Permitted Acquisitions does not exceed $2,000,000 in the aggregate.

provided that, notwithstanding the foregoing, the Castle Creek Mergers, if consummated no later than the Castle Creek Mergers Outside Date in accordance with the Castle Creek Merger Agreement and Section 6.14, shall be permitted under Section 7.6(e) and shall not be required to satisfy the conditions set forth in clauses (a) through (g) above, and the consideration paid in connection with the Castle Creek Mergers shall not be counted against the cap set forth in clause (g) above.

"Permitted Indebtedness" means and includes:

(a) Indebtedness of Co-Borrowers to Lenders under the Loan Documents;

(b) Indebtedness arising from the endorsement of instruments in the ordinary course of business;

(c) Indebtedness of any Co-Borrower or any Subsidiary of any Co-Borrower existing on the Effective Date and set forth on the Disclosure Schedule (as supplemented pursuant to Section 6.14(c));

(d) If Borrower Representative shall have provided evidence to Lenders acceptable to Lenders in their sole discretion that Co-Borrowers have achieved Trailing-Twelve-Month Net Revenue in an amount not less than $40,000,000, Indebtedness of Borrower Representative in an aggregate principal amount not exceeding $5,000,000, consisting of a revolving credit facility secured only by cash and accounts receivable with a lender acceptable to Lenders and subject to a subordination agreement acceptable to Lenders in their sole discretion at all times;

(e) (i) intercompany Indebtedness owing by any Co-Borrower or any Subsidiary in their Subsidiaries outstanding on the Effective Date and, in the case of any Indebtedness owed by an Excluded Subsidiary to a Co-Borrower, set forth on the Disclosure Schedule; (ii) intercompany Indebtedness owed by any Co-Borrower or Subsidiary to any Co-Borrower or any wholly-owned Subsidiary (other than any Excluded Subsidiary), as applicable; and (iii) intercompany Indebtedness incurred after the Original Closing Date owed by Chromocell to any Co-Borrower and its Subsidiaries; provided that any such Indebtedness pursuant to this clause (iii), together with Investments pursuant to clause (e)(iii) of the "Permitted Investments" definition, shall not exceed $3,000,000 in the aggregate at any time; provided further that, if applicable, such Indebtedness is also permitted as a Permitted Investment and, in the case of such Indebtedness owed to any Co-Borrower, such Indebtedness shall be evidenced by one or more promissory notes;

(f) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness under subsections (c), (d), (e), (n), (o), (p), (q), (r), (s) and (t) of this definition; provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon any Co-Borrower;

(g) to the extent constituting Indebtedness, Indebtedness of LNHC incurred pursuant to the terms of the Zelsuvmi License Agreement (i.e., "Milestone Payments" in accordance with Section 6.2 therein, including any payments as a result of the "Net Sales Milestone Event" defined therein), which Indebtedness is subject to the Ligand Milestone Subordination Agreement; and royalties payable pursuant to Section 6.1 therein;

(h) to the extent constituting Indebtedness, Indebtedness of LNHC incurred pursuant to the terms of the Zelsuvmi Purchase and Sale Agreement (i.e., "Purchased Receivables" as defined therein), which Indebtedness is subject to the Zelsuvmi Intercreditor Agreement;

(i) to the extent constituting Indebtedness, Indebtedness of Channel Pharmaceutical incurred pursuant to the terms of the Channel Assets Purchase and Sale Agreement (i.e., "Purchased Receivables" as defined therein), which Indebtedness is subject to the Channel Assets Intercreditor Agreement;

(j) to the extent constituting Indebtedness, Indebtedness of LNHC incurred pursuant to the terms of the Reedy Creek Purchase and Sale Agreement (i.e., "Assigned Rights" and "Sales Royalties" each as defined therein);

(k) to the extent constituting Indebtedness, Indebtedness of Pelthos incurred pursuant to the terms of the Xepi Purchase and Sale Agreement (i.e., "Royalty Interest Right" and the "Sato Payment" as defined therein), which Indebtedness is subject to the Xepi Intercreditor Agreement;

(l) to the extent constituting Indebtedness, Indebtedness of Pelthos incurred pursuant to the terms of the Xepi Convertible Notes, in connection with the financing of the Xepi Acquisition pursuant to the Xepi Acquisition Agreement, in an aggregate principal amount not exceeding $18,000,000 plus any interest capitalized and added to principal in accordance with the terms of the Xepi Convertible Notes, which Indebtedness is subject to the Xepi Convertible Notes Subordination Agreement;

(m) to the extent constituting Indebtedness, Indebtedness of Pelthos incurred pursuant to the terms of the Xepi Acquisition Agreement, in connection with earnouts payable to Xepi Seller and/or its affiliates pursuant to the Xepi Acquisition Agreement, in an aggregate amount not exceeding $7,000,000 at any time;

(n) Indebtedness not to exceed $250,000 in the aggregate at any time outstanding, consisting of capital leases and other similar obligations or secured by Liens permitted under the definition of "Permitted Liens";

(o) Indebtedness not to exceed $500,000 in the aggregate at any time outstanding, consisting of letters of credit or bankers acceptances;

(p) Indebtedness not to exceed $250,000 in the aggregate at any time in respect of employee credit card or purchase card programs, cash management services (including netting services, overdraft protections and other similar services), payment processing services and other like services, in each case incurred in the ordinary course of business;

(q) unsecured Indebtedness consisting of earnouts, seller notes and other similar deferred purchase consideration not to exceed $500,000 in the aggregate at any time and subject to one or more subordination agreements acceptable to Lenders in their sole discretion at all times;

(r) other unsecured Indebtedness not to exceed $250,000 in the aggregate at any time outstanding;

(s) to the extent constituting Indebtedness, Indebtedness of Pelthos incurred pursuant to the terms of Ferrer License, in connection with the "Upfront Payment" and payable pursuant to Section 3.1 therein, subject to receipt by Pelthos of the initial quantity of API purchased pursuant to Section 5.4 therein, where such API strictly complies with all of the requirements and representations and warranties set forth therein, in an aggregate amount not exceeding $1,200,000, and royalties payable pursuant to Section 3.2 therein;

(t) to the extent constituting Indebtedness, Indebtedness of LNHC incurred pursuant to the terms of UNC License Agreement;

(u) Indebtedness arising under guaranties made in the ordinary course of business of obligations of any Co-Borrower or any of its Subsidiaries, which obligations are otherwise permitted hereunder;

(v) unsecured Indebtedness of Castle Creek or Castle Creek Merger Sub II (as successor to Castle Creek) under the Castle Creek Bridge Notes, solely for the period from the Effective Date until cancellation pursuant to the Castle Creek Bridge Closing Credit no later than the Castle Creek Mergers Closing Date;

(w) from and after the Castle Creek Mergers Closing Date, to the extent constituting Indebtedness, Indebtedness of Castle Creek Merger Sub II (as successor to Castle Creek) and Castle Creek Sub under the Castle Creek Royalty Financing Documents (including in respect of the Royalty Interest and the PRV Interest, each as defined in the Castle Creek Purchased Assets Agreement), which Indebtedness is subject to the Castle Creek Assets Intercreditor Agreement;

(x) from and after the Castle Creek Mergers Closing Date, unsecured obligations of Borrower Representative and Castle Creek Merger Sub II (and their respective successors) in respect of the Castle Creek Contingent Consideration, which Indebtedness is subject to the provisions herein, including Section 7.5; and

(y) from and after the Castle Creek Mergers Closing Date, to the extent constituting Indebtedness, unsecured obligations of Castle Creek or Castle Creek Merger Sub II (as successor to Castle Creek) and Castle Creek Sub under the agreements set forth on the Disclosure Schedule (as supplemented pursuant to Section 6.14(c)), as in effect on the Castle Creek Mergers Closing Date or as amended in a manner not materially adverse to Lenders, (i) to pay milestones, royalties, sublicense income, cancellation fees and similar amounts under in-licenses and manufacturing or development agreements and (ii) in respect of the earn-out payable to the former equityholders of Novavita Thera, Inc.

"Permitted Indebtedness Documents" means, collectively, the Zelsuvmi License Agreement, the Purchase and Sale Agreements, the Xepi Convertible Notes, the Intercreditor Agreements, the Subordination Agreements, the Xepi Acquisition Agreement, the Ferrer License, the UNC License Agreement, the Castle Creek Royalty Financing Documents and all other documents, instruments and agreements entered into in connection with any of the foregoing.

"Permitted Investments" means and includes any of the following Investments:

(a) Deposits and deposit accounts with commercial banks organized under the laws of the United States or a state thereof to the extent: (i) the deposit accounts of each such institution are insured by the Federal Deposit Insurance Corporation up to the legal limit; and (ii) each such institution has an aggregate capital and surplus of not less than $100,000,000;

(b) Investments in marketable obligations issued or fully guaranteed by the United States and maturing not more than one (1) year from the date of issuance;

(c) Investments in open market commercial paper rated at least "A1" or "P1" or higher by a national credit rating agency and maturing not more than one (1) year from the creation thereof;

(d) Investments pursuant to or arising under currency agreements or interest rate agreements entered into in the ordinary course of business;

(e) (i) Investments by any Co-Borrower or any Subsidiary in their Subsidiaries outstanding on the Effective Date and, in the case of any Investment by a Co-Borrower in an Excluded Subsidiary, set forth on the Disclosure Schedule; (ii) Investments by any Co-Borrower and its Subsidiaries in any Co-Borrower; and (iii) Investments made after the Original Closing Date by any Co-Borrower and its Subsidiaries in Chromocell; provided that any such Investments pursuant to this clause (iii), together with Indebtedness pursuant to clause (e)(iii) of the "Permitted Indebtedness" definition, shall not exceed $3,000,000 in the aggregate made after the date of the Original Closing Date;

(f) Investments by any Co-Borrower and its Subsidiaries in any Co-Borrower or any Subsidiaries of any Co-Borrower; provided that any such investments pursuant to this clause (f) in any Subsidiaries that are not guarantors of the Obligations shall not exceed such amounts necessary to allow such Subsidiaries to pay franchise taxes, registered agent fees and other fees, costs and expenses incurred in connection with the preservation of their corporate existence or otherwise incurred in the ordinary course of business;

(g) other Investments existing on the Effective Date and set forth on the Disclosure Schedule attached hereto (as supplemented pursuant to Section 6.14(c));

(h) Investments comprised of "Permitted Indebtedness" permitted pursuant to the definition thereof; provided that any such Investments pursuant to this clause (h), together with Permitted Indebtedness permitted pursuant to the definition thereof shall be subject to the conditions set forth therein including, without limitation, any applicable caps on amounts in the aggregate at any time;

(i) Investments acquired in connection with the settlement of delinquent obligations of suppliers or customers in the ordinary course of business or in connection with the bankruptcy or reorganization of suppliers or customers;

(j) Investments not to exceed $250,000 in the aggregate at any time consisting of loans made by Borrower Representative to officers, directors and employees of a Co-Borrower or its Subsidiaries which are used by such Persons to purchase simultaneously Equity Securities of Borrower Representative;

(k) Investments not to exceed $250,000 in the aggregate at any time consisting of travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business;

(l) Investments in any joint ventures or partnerships resulting from the Transfer contemplated by Section 7.4(o) of this Agreement;

(m) Other Investments aggregating not in excess of $250,000 at any time;

(n) the following Investments made in connection with the Castle Creek Mergers, in each case in accordance with the Castle Creek Merger Agreement and the Mergers Funds Flow Memorandum, as applicable: (i) the capitalization of each of Castle Creek Merger Sub and Castle Creek Merger Sub II by Borrower Representative in a nominal amount not to exceed $1,000 each, together with the payment of customary formation and maintenance costs; (ii) to the extent constituting an Investment, the payment of the Castle Creek Closing Payments on the Castle Creek Mergers Closing Date in accordance with the Mergers Funds Flow Memorandum; (iii) the acquisition by Borrower Representative of the Castle Creek Bridge Notes by assignment pursuant to the Castle Creek Bridge Closing Credit, so long as such Castle Creek Bridge Notes are cancelled no later than the Castle Creek Mergers Closing Date; and (iv) the acquisition of the Equity Securities of Castle Creek (and, indirectly, Castle Creek Sub) pursuant to the Castle Creek Mergers, including the payment, issuance or delivery when due of the Castle Creek Contingent Consideration permitted under clause (x) of the definition of "Permitted Indebtedness"; and

(o) Permitted Acquisitions.

"Permitted Liens" means and includes:

(a) the Liens created by this Agreement;

(b) Liens for fees, taxes, levies, imposts, tariffs, duties or other governmental charges of any kind which are not yet delinquent or which are being contested in good faith by appropriate proceedings which suspend the collection thereof (provided that such appropriate proceedings do not involve any substantial danger of the sale, forfeiture or loss of any portion of Collateral which in the aggregate is material to any Co-Borrower, and that the Co-Borrowers have adequately bonded such Lien or reserves sufficient to discharge such Lien have been provided on the books of Co-Borrowers);

(c) Liens identified on the Disclosure Schedule (as supplemented pursuant to Section 6.14(c));

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings (provided that such appropriate proceedings do not involve any substantial danger of the sale, forfeiture or loss of any material item of Collateral or Collateral which in the aggregate is material to any Co-Borrower, and that Co-Borrowers have adequately bonded such Lien or reserves sufficient to discharge such Lien have been provided on the books of Co-Borrowers);

(e) Liens granted in connection with Indebtedness permitted under subsection (d) of the definition of "*Permitted Indebtedness*" and subordinated to the Liens in favor of Lenders pursuant to a subordination agreement acceptable to Lenders in their sole discretion at all times;

(f) Liens granted in connection with Indebtedness permitted under subsections (h), (i), (j), (k), (l), and, from and after the Castle Creek Mergers Closing Date, (w) of the definition of "Permitted Indebtedness" (including Liens under the Castle Creek Royalty Financing Documents) and subject to the Intercreditor Agreements in favor of Lenders at all times;

(g) (i) non-exclusive licenses of Intellectual Property entered into in the ordinary course of business and (ii) licenses for the use of Intellectual Property that do not result in a legal transfer of ownership of the licensed property but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States;

(h) Liens consisting of judgment or judicial attachment liens (other than for payment of taxes), provided that the enforcement of such Liens is effectively stayed and the existence of such judgment does not constitute an Event of Default under Section 8.9 herein;

(i) (i) Liens on any property acquired or held by any Co-Borrower or any Subsidiary of any Co-Borrower securing Indebtedness incurred or assumed for the purpose of financing (or refinancing) all or any part of the cost of acquiring such property and permitted under clause (n) of the definition of "Permitted Indebtedness"; provided that (x) such Lien attaches solely to the property so acquired in such transaction and the proceeds thereof and (y) the principal amount of the Indebtedness secured thereby does not exceed 100% of the cost of such property; and (ii) Liens securing capital lease obligations permitted under the definition of "Permitted Indebtedness";

(j) non-exclusive licenses and sublicenses (other than in respect of Intellectual Property) granted by a Co-Borrower or any Subsidiary of a Co-Borrower and leases and subleases (by a Co-Borrower or any Subsidiary of a Co-Borrower as lessor or sublessor) to third parties in the ordinary course of business not interfering with the business of the Co-Borrowers or any of their Subsidiaries;

(k) Liens in favor of collecting banks arising by operation of law under Section 4-210 of the UCC;

(l) Liens (including the right of set off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(m) Liens consisting solely of cash collateral securing obligations in respect of the letters of credit or bankers acceptances permitted under clause (o) of the definition of "Permitted Indebtedness" in an amount not to exceed 105% of the face amount of each such letter of credit;

(n) Liens arising from precautionary UCC financing statements (or equivalent filings or registrations) filed under any lease permitted by this Agreement;

(o) holdbacks and Liens on amounts deposited or certificates of deposit to secure obligations in respect of Indebtedness permitted hereby in the ordinary course of business;

(p) Liens incurred in the extension, renewal or refinancing of Permitted Indebtedness secured by Liens permitted hereby; provided that, the principal amount of the Indebtedness may not increase and any such extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien; and

(q) other Liens securing obligations otherwise permitted hereunder not exceeding $250,000 in the aggregate.

"Person" means and includes any individual, any partnership, any corporation, any business trust, any joint stock company, any limited liability company, any unincorporated association or any other entity and any domestic or foreign national, state or local government, any political subdivision thereof, and any department, agency, authority or bureau of any of the foregoing.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, whether tangible or intangible.

"Purchase and Sale Agreements" means, collectively, the Channel Assets Purchase and Sale Agreement, the Zelsuvmi Purchase and Sale Agreement, the Reedy Creek Purchase and Sale Agreement and the Xepi Purchase and Sale Agreement.

"Reedy Creek" means Reedy Creek Investments LLC, a North Carolina limited liability company.

"Reedy Creek Purchase and Sale Agreement" means that certain Royalty and Milestone Payments Purchase Agreement, dated as of April 29, 2019, by and between Novan and Reedy Creek, as amended by that certain Amendment, Assignment and Assumption Agreement, dated as of September 11, 2023, by and between Novan, LNHC and Reedy Creek, as in effect on the Original Closing Date.

"Releasees" has the meaning given such term in Section 19.2 of this Agreement.

"Responsible Officer" has the meaning given such term in Section 6.3 of this Agreement.

"Restricted Entity" means any Person who (a) is on the Specially Designated Nationals and Blocked Persons List, (b) is on the Non-SDN Menu-Based Sanctions List, (c) is on the Sectoral Sanctions Identifications List, (d) is on the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions, (e) is on the United Kingdom Office of Financial Sanctions Implementation HM Treasury Consolidated List of Financial Sanctions Targets, (f) is designated under European Union sanctions measures, (g) was formed pursuant to the laws of, or is domiciled in the Russian Federation, or (h) is a ministry, agency, state owned entity, or sovereign wealth fund of the Russian Federation.

"Restricted License" means any license or other agreement with respect to which any Co-Borrower is the licensee and such license or agreement is material to any Co-Borrower's business and (a) that prohibits or otherwise restricts any Co-Borrower from granting a security interest in any Co-Borrower's interest in such license or agreement or any other property or (b) for which a default under or termination of could interfere with Collateral Agent's or Lenders' right to sell any Collateral. For clarity, "Restricted License" does not include "off-the-shelf" or over-the-counter software or information technology that is commercially available to the public (or to relevant consumers in the applicable industry), or any other license for Intellectual Property that is not material to the operation of any Co-Borrower's business.

"SAFE" means a simple agreement for future equity, or any similar agreement, whereby a Person (the "SAFE Issuer") issues any other Person the future right to own Equity Securities of the SAFE Issuer, in exchange for the payment of cash to be converted into such Equity Securities.

"Sanctions" means any sanction administered or enforced by the United States Government (including, without limitation, OFAC and the United States Department of State), the United Nations Security Council, the European Union, His Majesty's Treasury or other relevant sanctions authority.

"Scheduled Payments" has the meaning given such term in Section 2.2(a) of this Agreement.

"Second Merger" has the meaning given such term in the Recitals.

"Second Merger Co-Borrowers" means the Existing Co-Borrowers, together with Castle Creek Sub.

"Solvent" has the meaning given such term in Section 5.12 of this Agreement.

"Specified Event of Default" means an Event of Default under any of (i) Section 8.1 (Failure to Pay), (ii) Section 8.2 (solely for the failure to perform the obligations arising under Section 6.13 (Cash on Deposit)), (iii) Section 8.4 (Material Adverse Effect), (iv) Section 8.13 (Involuntary Insolvency Proceeding), or (v) Section 8.14 (Voluntary Insolvency Proceeding).

"Subordination Agreements" means, collectively, the Ligand Milestone Subordination Agreement and the Xepi Convertible Notes Subordination Agreement.

"Subsidiary" means any corporation or other entity of which a majority of the outstanding Equity Securities entitled to vote for the election of directors or other governing body (otherwise than as the result of a default) is owned by any Co-Borrower directly or indirectly through Subsidiaries.

"Trailing Twelve-Month Net Revenue" means Net Revenue achieved over the 12-month period immediately preceding the applicable date of determination.

"Transaction Closing Costs" means all fees, costs and expenses incurred by Borrower Representative, Castle Creek and any other party in connection with the Castle Creek Mergers, the Castle Creek Merger Agreement, the Concurrent Financing (as defined in the Castle Creek Merger Agreement) and the transactions contemplated hereby and thereby, as identified on the Mergers Funds Flow Memorandum, which amount is estimated as of the Effective Date to be approximately Twelve Million Dollars ($12,000,000); provided, however, that Transaction Closing Costs expressly exclude (i) all fees, costs and expenses incurred by Lenders in connection with this Agreement and payable to Lenders in accordance with Sections 2.6 and 3.1(p) as a condition of entering in this Agreement and (ii) any amount included in the Castle Creek Loan Payoff Amount or the Innovator Seller Note Payoff Amount.

"Transfer" has the meaning given such term in Section 7.4 of this Agreement.

"UNC License Agreement" means that certain Amended, Restated and Consolidated License Agreement dated June 27, 2012 between The University of North Carolina at Chapel Hill and LNHC, Inc., as successor-in-interest to Novan, Inc., as amended as of the Original Closing Date, and as further amended, modified and supplemented from time to time.

"U.S. Tax Compliance Certificate" has the meaning given such term in Section 2.4(c)(iv) of this Agreement.

"Warrant" means, individually and collectively, the separate warrant or warrants dated on or about any Funding Date (including the Original Closing Date and the Effective Date) in favor of Lenders or their designees to purchase securities of Borrower Representative.

"Xepi 3i Convertible Note" means that certain Senior Secured Convertible Note, dated as of November 6, 2025, in the aggregate original principal amount of $1,000,000, issued by Pelthos in favor of 3i, LP, as in effect on the Original Closing Date.

"Xepi Acquisition" means the acquisition of various assets related to XepiTM ozenoxacin from Xepi Seller pursuant to the terms and conditions of the Xepi Acquisition Agreement.

"Xepi Acquisition Agreement" means that certain Asset Purchase Agreement, dated as of November 6, 2025, by and between Xepi Seller and Pelthos, as in effect on the Original Closing Date.

"Xepi Aperture Convertible Note" means that certain Senior Secured Convertible Note, dated as of November 6, 2025, in the aggregate original principal amount of $250,000, issued by Pelthos in favor of Aperture Healthcare Ventures Ltd., as in effect on the Original Closing Date.

"Xepi Balmoral Convertible Note" means that certain Senior Secured Convertible Note, dated as of November 6, 2025, in the aggregate original principal amount of $250,000, issued by Pelthos in favor of Balmoral Financial Group LLC, as in effect on the Original Closing Date.

"Xepi Boothbay Convertible Note" means that certain Senior Secured Convertible Note, dated as of November 6, 2025, in the aggregate original principal amount of $1,000,000, issued by Pelthos in favor of Boothbay Absolute Return Strategies, LP, as in effect on the Original Closing Date.

"Xepi BPY Convertible Note" means that certain Senior Secured Convertible Note, dated as of November 6, 2025, in the aggregate original principal amount of $580,000, issued by Pelthos in favor of BPY Limited, as in effect on the Original Closing Date.

"Xepi Convertible Notes" means, collectively, the Xepi 3i Convertible Note, the Xepi Aperture Convertible Note, the Xepi Balmoral Convertible Note, the Xepi Boothbay Convertible Note, the Xepi BPY Convertible Note, the Xepi Ligand Convertible Note, the Xepi Nomis Bay Convertible Note and the Xepi Nomis Bay Opportunity Convertible Note.

"Xepi Convertible Notes Subordination Agreement" means that certain Subordination Agreement, dated on or about the Original Closing Date, by and between Lenders and each holder of any Xepi Convertible Notes, which subordinates the payment of the Xepi Convertible Notes to the repayment of the Obligations.

"Xepi Intercreditor Agreement" means that certain Intercreditor Agreement, dated on or about the Original Closing Date, by and among Horizon, Ligand, Nomis and each Co-Borrower.

"Xepi Ligand Convertible Note" means that certain Senior Secured Convertible Note, dated as of November 6, 2025, in the aggregate original principal amount of $9,000,000, issued by Pelthos in favor of Ligand, as in effect on the Original Closing Date.

"Xepi Nomis Bay Convertible Note" means that certain Senior Secured Convertible Note, dated as of November 6, 2025, in the aggregate original principal amount of $2,420,000, issued by Pelthos in favor of Nomis Bay LTD, as in effect on the Original Closing Date.

"Xepi Nomis Bay Opportunity Convertible Note" means that certain Senior Secured Convertible Note, dated as of November 5, 2025, in the aggregate original principal amount of $3,500,000, issued by Pelthos in favor of Nomis Bay Opportunity Ltd., as in effect on the Original Closing Date.

"Xepi Purchase and Sale Agreement" means that certain Securities Purchase Agreement, dated November 6, 2024, by and among Pelthos, and each of the parties signatory thereto as a Buyer (as defined therein), as amended, modified and supplemented from time to time in compliance with the Xepi Intercreditor Agreement.

"Xepi Seller" means Biofrontera Inc.

"Zelsuvmi Intercreditor Agreement" means that certain Intercreditor Agreement, dated on or about the Original Closing Date, by and among Horizon, Nomis and each Co-Borrower.

"Zelsuvmi License Agreement" means that certain Exclusive License and Sublicense Agreement, dated as of March 24, 2025, by and between Ligand, as Licensor (as defined therein) and LNHC, as Licensee (as defined therein), as in effect on the Original Closing Date.

"Zelsuvmi Purchase and Sale Agreement" means that certain Purchase and Sale Agreement, dated as of July 1, 2025, by and among LNHC and Borrower Representative (as successor in interest to Channel Therapeutics), as the Seller Parties (as defined therein), and Nomis, as the Purchaser (as defined therein), as amended as of the Original Closing Date, and as further amended, modified and supplemented from time to time in compliance with the Zelsuvmi Intercreditor Agreement.

1.2 Construction. References in this Agreement to "Articles," "Sections," "Exhibits," "Schedules" and "Annexes" are to recitals, articles, sections, exhibits, schedules and annexes herein and hereto unless otherwise indicated. References in this Agreement and each of the other Loan Documents to any document, instrument or agreement shall include (a) all exhibits, schedules, annexes and other attachments thereto, (b) all documents, instruments or agreements issued or executed in replacement thereof, and (c) such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time (subject, in the case of clauses (b) and (c), to any restrictions on such replacement, amendment, modification or supplement set forth in the Loan Documents). The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. The words "include" and "including" and words of similar import when used in this Agreement or any other Loan Document shall not be construed to be limiting or exclusive. Unless the context requires otherwise, any reference in this Agreement or any other Loan Document to any Person shall be construed to include such Person's successors and assigns. Unless otherwise indicated in this Agreement or any other Loan Document, all accounting terms used in this Agreement or any other Loan Document shall be construed, and all accounting and financial computations hereunder or thereunder shall be computed, in accordance with GAAP, and all terms describing Collateral shall be construed in accordance with the Code; provided that no change in the accounting principles used in the preparation of any financial statement hereafter adopted by the Co-Borrowers shall be given effect for purposes of measuring compliance with any provision of the Loan Documents unless the Co-Borrowers and Lenders agree to modify such provisions to reflect such changes in GAAP and, unless such provisions are modified, all financial statements and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP. Notwithstanding any provision of this Agreement to the contrary, all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP but for the effectiveness of FASB ASC-842 shall continue to be accounted for as operating leases for all purposes of this Agreement, including, without limitation, for purposes of all financial definitions, calculations and covenants hereunder (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC-842 (on a prospective or retroactive basis or otherwise) to be treated as capital lease obligations in the financial statements. The terms and information set forth on the cover page of this Agreement are incorporated into this Agreement.

2. Loans; Repayment.

2.1 Commitments.

(a) The Commitment Amounts. Subject to the terms and conditions of this Agreement, and relying upon the representations and warranties herein set forth as and when made or deemed to be made: (i) Lenders have previously lent to the Existing Co-Borrowers on the Original Closing Date (A) prior to the Loan A Commitment Termination Date, Loan A, (B) prior to the Loan B Commitment Termination Date, Loan B, (C) prior to the Loan C Commitment Termination Date, Loan C, and (D) prior to the Loan D Commitment Termination Date, Loan D; (ii) Lenders agree to lend to Co-Borrowers on the Effective Date, in a single advance with respect to each such Loan in the full amount of the applicable Commitment Amount, (A) Loan E, (B) Loan F, (C) Loan G, and (D) Loan H and (iii) Lenders agree to lend to Co-Borrowers prior to the (A) Loan I Commitment Termination Date and (B) Loan J Commitment Termination Date, subject to the terms hereof. Amounts borrowed hereunder and repaid or prepaid may not be reborrowed.

(b) The Loans and the Notes. The obligation of Co-Borrowers to repay the unpaid principal amount of and interest on each Loan shall be evidenced by a Note issued to the applicable Lender.

(c) Use of Proceeds. The proceeds of Loan A, Loan B, Loan C and Loan D have been used solely for working capital or general corporate purposes of Co-Borrowers and their Subsidiaries. The proceeds of the Amendment Loans shall be used (i) to pay the Amendment Commitment Fee and Lenders' Expenses on the Effective Date, (ii) to partially fund, on the Castle Creek Mergers Closing Date and in accordance with the Mergers Funds Flow Memorandum, the Castle Creek Closing Payments, and (iii) for working capital or general corporate purposes of Co-Borrowers and their Subsidiaries. Co-Borrowers hereby irrevocably authorize and direct Lenders to disburse the proceeds of the Amendment Loans directly to the payees identified in the Funding Certificate dated as of the Effective Date.

(d) Termination of Commitment to Lend. Notwithstanding anything in the Loan Documents, each Lender's obligation to lend the undisbursed portion of its Commitment Amount to Co-Borrowers hereunder shall terminate on the earlier of (i) at Lenders' sole election, the occurrence of any Event of Default hereunder, and (ii) with respect to Loan A, the Loan A Commitment Termination Date, with respect to Loan B, the Loan B Commitment Termination Date, with respect to Loan C, the Loan C Commitment Termination Date and with respect to Loan D, the Loan D Commitment Termination Date, with respect to Loan E, the Loan E Commitment Termination Date, with respect to Loan F, the Loan F Commitment Termination Date, with respect to Loan G, the Loan G Commitment Termination Date, with respect to Loan H, the Loan H Commitment Termination Date, with respect to Loan I, the Loan I Commitment Termination Date and, with respect to Loan J, the Loan J Commitment Termination Date.

(e) Loan E, Loan F, Loan G and Loan H Revenue Milestones. Lenders hereby acknowledge and agree that, as of the Effective Date, the Trailing Twelve-Month Net Revenue conditions applicable to Loan E, Loan F, Loan G and Loan H under Section 3.3(e) and 3.4(e) of the Original Loan Agreement have been satisfied. The foregoing acknowledgement shall not constitute an acknowledgement of the Interest Only Extension Milestone or of any other term or condition of this Agreement or any other Loan Document.

2.2 Payments.

(a) Scheduled Payments. Co-Borrowers shall make (i) a payment of accrued interest only to Lenders on the outstanding principal amount of each Loan on the first 36 Payment Dates specified in the Note applicable to such Loan and (ii) an equal payment of principal plus accrued interest to Lenders on the outstanding principal amount of each Loan on the next 24 Payment Dates as set forth in the Note applicable to such Loan (collectively, the "Initial Loan Scheduled Payments"). Notwithstanding, and in lieu of, the foregoing, if Co-Borrowers satisfy the Interest Only Extension Milestone, then Co-Borrowers shall make (A) a payment of accrued interest only to Lenders on the outstanding principal amount of each Loan on the first 48 Payment Dates specified in the Note applicable to such Loan and (B) an equal payment of principal plus accrued interest to Lenders on the outstanding principal amount of each Loan on the next 12 Payment Dates as set forth in the Note applicable to such Loan (collectively, the "Initial Loan Extended Interest Scheduled Payments", and collectively with the Initial Loan Scheduled Payments, the "Scheduled Payments"). Notwithstanding the foregoing, the Scheduled Payments for each Amendment Loan shall be set forth in the Note applicable to such Loan such that (x) the Loan Amortization Date for each Amendment Loan is the same Payment Date as the Loan Amortization Date for Loan A, Loan B, Loan C and Loan D, and (y) each Amendment Loan is fully amortized on the Maturity Date. Co-Borrowers shall make such Scheduled Payments commencing on the date set forth in the Note applicable to such Loan and continuing thereafter on the first Business Day of each calendar month (each a "Payment Date") through the Maturity Date. In any event, all unpaid principal and accrued interest shall be due and payable in full on the Maturity Date applicable to such Loan.

(b) Interim Payment. Unless the Funding Date for a Loan is the first day of a calendar month, Co-Borrowers shall pay the per diem interest (accruing at the Loan Rate from the Funding Date through the last day of that month) payable with respect to such Loan on the first Business Day of the next calendar month.

(c) Payment of Interest. Co-Borrowers shall pay interest on each Loan at a per annum rate of interest equal to the Loan Rate. Interest on a Loan shall be charged commencing on the day that such Loan is made to or on behalf of any Co-Borrower, and shall continue to accrue through the date on which such Loan is repaid in full. Changes to the Loan Rate based on changes to the "prime rate" (or such substitute benchmark rate selected in accordance with the definition of "Loan Rate" set forth in Section 1.1 above) shall be effective on the effective date of any change to the "prime rate" (or such substitute benchmark rate selected in accordance with the definition of "Loan Rate" set forth in Section 1.1 above) and to the extent of any such change. Interest (including interest at the Default Rate, if applicable) shall be computed on the basis of a 360-day year for the actual number of days elapsed. Notwithstanding any other provision hereof, the amount of interest payable hereunder shall not in any event exceed the maximum amount permitted by the law applicable to interest charged on commercial loans.

(d) Application of Payments. All payments received by Lenders prior to an Event of Default shall be applied as follows: (i) first, to Lenders' Expenses then due and owing; and (ii) second, ratably, to all Scheduled Payments then due and owing (provided, however, if such payments are not sufficient to pay the whole amount then due, such payments shall be applied first to unpaid interest at the Loan Rate, then to the remaining amounts then due). After an Event of Default, all payments and application of proceeds shall be made as set forth in Section 9.7.

(e) Late Payment Fee. If any Scheduled Payment is not paid when due, Co-Borrowers shall pay to Collateral Agent, for the account of the Lender to which such Scheduled Payment is owed, a late payment fee equal to six percent (6%) of the unpaid amount of such Scheduled Payment.

(f) Default Rate. Co-Borrowers shall pay interest at a per annum rate equal to the Default Rate on any amounts required to be paid by any Co-Borrower to Collateral Agent or Lenders under this Agreement or the other Loan Documents (including Scheduled Payments), payable with respect to any Loan, accrued and unpaid interest, and any fees or other amounts which remain unpaid after such amounts are due. If an Event of Default has occurred and the Obligations have been accelerated (whether automatically or by Lenders' election), Co-Borrowers shall pay interest on the aggregate, outstanding accelerated balance hereunder from the date of the Event of Default until all Events of Default are cured, at a per annum rate equal to the Default Rate.

(g) Final Payment.

(i) Loan A Final Payment. Co-Borrowers shall pay to Lenders a payment in the amount of $500,000 (the "Loan A Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan A, (B) an Event of Default and demand by Lenders of payment in full of Loan A or (C) the Maturity Date applicable to Loan A, as applicable.

(ii) Loan B Final Payment. Co-Borrowers shall pay to Lenders a payment in the amount of $500,000 (the "Loan B Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan B, (B) an Event of Default and demand by Lenders of payment in full of Loan B or (C) the Maturity Date applicable to Loan B, as applicable.

(iii) Loan C Final Payment. Co-Borrowers shall pay to Lenders a payment in the amount of $250,000 (the "Loan C Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan C, (B) an Event of Default and demand by Lenders of payment in full of Loan C or (C) the Maturity Date applicable to Loan C, as applicable.

(iv) Loan D Final Payment. Co-Borrowers shall pay to Lenders a payment in the amount of $250,000 (the "Loan D Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan D, (B) an Event of Default and demand by Lenders of payment in full of Loan D or (C) the Maturity Date applicable to Loan D, as applicable.

(v) Loan E Final Payment. Co-Borrowers shall pay to Lenders a payment in the amount of $125,000 (the "Loan E Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan E, (B) an Event of Default and demand by Lenders of payment in full of Loan E or (C) the Maturity Date applicable to Loan E, as applicable.

(vi) Loan F Final Payment. Co-Borrowers shall pay to Lenders a payment in the amount of $125,000 (the "Loan F Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan F, (B) an Event of Default and demand by Lenders of payment in full of Loan F or (C) the Maturity Date applicable to Loan F, as applicable.

(vii) Loan G Final Payment. Co-Borrowers shall pay to Lenders a payment in the amount of $125,000 (the "Loan G Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan G, (B) an Event of Default and demand by Lenders of payment in full of Loan G or (C) the Maturity Date applicable to Loan G, as applicable.

(viii) Loan H Final Payment. Co-Borrowers shall pay to Lenders a payment in the amount $125,000 (the "Loan H Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan H, (B) an Event of Default and demand by Lenders of payment in full of Loan H or (C) the Maturity Date applicable to Loan H, as applicable.

(ix) Loan I Final Payment. Co-Borrowers shall pay to Lenders a payment in the amount $250,000 (the "Loan I Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan I, (B) an Event of Default and demand by Lenders of payment in full of Loan I or (C) the Maturity Date applicable to Loan I, as applicable.

(x) Loan J Final Payment. Co-Borrowers shall pay to Lenders a payment in the amount of $250,000 (the "Loan J Final Payment") upon the earlier of (A) payment in full of the principal balance of Loan J, (B) an Event of Default and demand by Lenders of payment in full of Loan J or (C) the Maturity Date applicable to Loan J, as applicable.

2.3 Prepayments.

(a) Mandatory Prepayments. If the Loans are accelerated following the occurrence of an Event of Default pursuant to Section 9.1(a) hereof, then Co-Borrowers, in addition to any other amounts which may be due and owing hereunder, shall promptly (and in any event, within one Business Day) pay to Lenders the amount set forth in Section 2.3(b) below, as if Co-Borrowers had opted to prepay on the date of such acceleration.

(b) Optional Prepayment. Upon five Business Days' prior written notice to Lenders, Co-Borrowers may, at their option, at any time, prepay all (and not less than all) of the outstanding Loans by simultaneously paying to Lenders an amount equal to (i) any accrued and unpaid interest on the outstanding principal balance of the Loans; *plus* (ii) an amount equal to (A) if such Loan is prepaid on or before the Loan Amortization Date applicable to such Loan, three percent of the then outstanding principal balance of such Loan, (B) if such Loan is prepaid after the Loan Amortization Date applicable to such Loan, but on or before the date that is 12 months after such Loan Amortization Date, two percent of the then outstanding principal balance of such Loan, or (C) if such Loan is prepaid more than 12 months after the Loan Amortization Date applicable to such Loan, one percent of the then outstanding principal balance of such Loan; *plus* (iii) the outstanding principal balance of such Loan; *plus* (iv) all other sums, if any, that shall have become due and payable hereunder.

2.4 Other Payment Terms.

(a) Place and Manner. Co-Borrowers shall make all payments due to Lenders and under the other Loan Documents to Collateral Agent, for the account of the applicable Lenders, in lawful money of the United States, and any such payment made to Collateral Agent shall be deemed made to, and shall discharge the applicable Obligations owing to, the applicable Lenders. All payments of principal, interest, fees and other amounts payable by Co-Borrowers hereunder shall be made, in immediately available funds, not later than 2:00 p.m. New York time, on the date on which such payment is due. Any payment received by Collateral Agent after the time set forth in the immediately preceding sentence will be deemed to have been received at the opening of business on the next Business Day, and interest shall accrue through such date. Co-Borrowers shall make such payments to Collateral Agent via wire transfer or ACH as instructed by Collateral Agent from time to time.

(b) Date. Whenever any payment is due hereunder on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of interest or fees, as the case may be.

(c) Taxes.

(i) Unless otherwise required under applicable law, any and all payments made hereunder or under the Notes shall be made free and clear of and without deduction for any taxes; provided that if any Co-Borrower shall be required to deduct any taxes from such payments, then (A) in the case of Indemnified Taxes, the sum payable shall be increased as necessary so that after making all required deductions (including deductions for Indemnified Taxes applicable to additional sums payable under this Section 2.4(c)) the applicable Lender receives an amount equal to the sum it would have received had no such deductions been made, (B) such Co-Borrower shall make such deductions and (C) such Co-Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(ii) Co-Borrowers shall indemnify each Lender, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes imposed or asserted directly on such Lender by any Governmental Authority on or attributable to amounts payable under this Agreement solely as a result of such Lender entering into this Agreement to the extent such taxes are paid by such Lender, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Co-Borrowers by such Lender shall be conclusive absent manifest error.

(iii) As soon as practicable after any payment of taxes by any Co-Borrower hereunder to a Governmental Authority, such Co-Borrower shall deliver to Lenders the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Lenders.

(iv) If any Lender is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Co-Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement, such Lender shall deliver to such Co-Borrower, as reasonably requested by such Co-Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate. If any Lender is a "United States person" under Section 7701(a)(30) of the Internal Revenue Code, such Lender shall deliver to the Borrower Representative on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax. If any Lender is not a "United States person" under Section 7701(a)(30) of the Internal Revenue Code, such Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative (in such number of copies as shall be requested by the Borrower Representative) on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative), whichever of the following is applicable: (A) in the case of a Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under the Loan Documents, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty; (B) executed copies of IRS Form W-8ECI; (C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of any Co-Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" related to any Co-Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or (D) to the extent a Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable. If a payment made to any Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by Sections 1471 through 1474 of the Internal Revenue Code ("FATCA") if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower Representative at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower Representative as may be necessary for the Co-Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment.

(v) If any Lender receives a refund (or credit in lieu of a refund) in respect of taxes paid by any Co-Borrower pursuant to this Section 2.4(c), which in the sole discretion of such Lender exercised in good faith is allocable to such payment, it shall promptly pay such refund, together with any other amounts paid by such Co-Borrower in connection with such refunded taxes, to such Co-Borrower, net of all out-of-pocket expenses (including any taxes to which such Lender has become subject as a result of its receipt of such refund) of such Lender incurred in obtaining such refund and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that Co-Borrowers, upon the request of such Lender, shall repay to such Lender amounts paid over pursuant to the preceding clause (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (v), in no event will any Lender be required to pay any amount to any Co-Borrower pursuant to this paragraph (v) the payment of which would place such Lender in a less favorable net after-tax position than such Lender would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Co-Borrower or any other Person.

2.5 Procedure for Making the Loans.

(a) Notice. Other than with respect to the Loans made on the Original Closing Date and the Amendment Loans to be made on the Effective Date, Borrower Representative shall notify Lenders of the date on which Borrower Representative desires Lenders to make any Loan at least three Business Days in advance of the desired Funding Date, unless Lenders elect at their sole discretion to allow the Funding Date for a Loan to be made by Lenders to be within three Business Days of Borrower Representative's notice. Each Co-Borrower's execution and delivery to Lenders of one or more Notes in respect of a Loan shall be such Co-Borrower's agreement to the terms and calculations thereunder with respect to such Loan. Lenders' obligation to make any Loan shall be expressly subject to the satisfaction of the conditions set forth in Section 3.

(b) Loan Rate Calculation. Prior to each Funding Date for any Loan, Lenders shall establish the Loan Rate with respect to such Loan, which shall be conclusive in the absence of a manifest error.

(c) Disbursement. Lenders shall disburse the proceeds of each Loan (including, without limitation, the Amendment Loans), by wire transfer to Co-Borrowers at the account specified in the Funding Certificate for such Loan.

2.6 Good Faith Deposit; Legal and Closing Expenses; and Amendment Commitment Fee.

(a) Good Faith Deposit. Borrower Representative previously delivered to Lenders a good faith deposit in the amount of $150,000, which was credited to the Commitment Fee payable to the Lenders on the Original Closing Date. Borrower Representative has delivered to Lenders an additional good faith deposit in the amount of $125,000 (the "Amendment Good Faith Deposit") in connection with this Agreement, which shall be applied on the Effective Date (i) first, to Lenders' expenses incurred in accordance with Section 2.6(b), (ii) second, to the Amendment Commitment Fee payable pursuant to Section 2.6(c), and (iii) third, to any other amounts payable by Co-Borrowers on the Effective Date, with any remaining balance promptly returned to Borrower Representative. If, in connection with their due diligence or underwriting, Lenders elect not to proceed with the financing contemplated hereby, Lenders shall deduct their expenses incurred in accordance with Section 2.6(b) from the Amendment Good Faith Deposit and promptly return any remaining portion to Borrower Representative; provided, however, that if the Funding Date for Loan E, Loan F, Loan G or Loan H does not occur for any reason other than Lenders' election not to proceed despite the Co-Borrowers' satisfaction of all conditions to the funding of such Loans, Lenders shall be entitled to retain the entire Amendment Good Faith Deposit as compensation for their efforts including, without limitation, their time, expenses and opportunity cost.

(b) Legal, Due Diligence and Documentation Expenses. Concurrently with its execution and delivery of this Agreement, Co-Borrowers shall pay to Lenders all of Lenders' reasonable legal, due diligence and documentation expenses in connection with the negotiation and documentation of this Agreement and the Loan Documents.

(c) Amendment Commitment Fee. Co-Borrowers shall pay, (i) concurrently with its execution and delivery of this Agreement, a commitment fee to Lenders in the amount of $100,000, less any amounts credited from the Amendment Good Faith Deposit pursuant to Section 2.6(a)), and (ii) concurrently with the funding of Loan I and Loan J, in each case, on the applicable Funding Date therefor, a commitment fee to Lenders in the amount of 1.00% of the principal amount of such Loan(s) funded on such Funding Date (collectively, the "Amendment Commitment Fee"). The Amendment Commitment Fee shall be paid by Co-Borrowers as set forth in the applicable Funding Certificate. The Amendment Commitment Fee (or any portion thereof) shall be retained by the Lenders and be deemed fully earned upon receipt.

2.7 Warrants.

(a) Existing Warrants. Each Warrant issued by Borrower Representative to Lenders or their designees on or prior to the Effective Date shall remain outstanding in accordance with its terms, and nothing in this Agreement shall be deemed to amend, modify or waive any term thereof.

(b) Loan E, Loan F, Loan G and Loan H Warrants. Borrower Representative shall issue to Lenders, on the Effective Date, Warrants with respect to Loan E, Loan F, Loan G and Loan H on the terms contemplated by Section 3.2(d) hereunder.

(c) Loan I and Loan J Warrants. Borrower Representative shall issue to Lenders, on the applicable Funding Date, Warrants with respect to Loan I and Loan J on the terms contemplated by Section 3.5(c) hereunder.

3. Conditions of Loans.

3.1 Conditions Precedent to Effective Date. The parties acknowledge that the conditions precedent to the closing of the Original Loan Agreement and to the making of Loan A, Loan B, Loan C and Loan D set forth in Sections 3.1 and 3.2 of the Original Loan Agreement were satisfied or waived on the Original Closing Date. At the time of the execution and delivery of this Agreement, Lenders shall have received, in form and substance reasonably acceptable to Lenders, all of the following (unless Lenders have agreed to waive such condition or document, in which case such condition or document shall be a condition precedent to the making of any Amendment Loan and shall be deemed added to Section 3.2):

(a) Loan Agreement. This Agreement duly executed by each Co-Borrower, Collateral Agent and Lenders.

(b) Secretary's Certificate. A certificate of the secretary or assistant secretary of each Co-Borrower, dated as of the Effective Date, with copies of the following documents attached: (i) the certificate of incorporation and bylaws (or equivalent documents) of such Co-Borrower certified by such Co-Borrower as being complete and in full force and effect on the date thereof, (ii) incumbency and representative signatures, and (iii) resolutions authorizing the execution and delivery of this Agreement and each of the other Loan Documents.

(c) Good Standing Certificates. A good standing certificate from each Co-Borrower's state of organization and the state in which such Co-Borrower's principal place of business is located, each dated as of a date no earlier than thirty (30) days prior to the date hereof.

(d) Certificate of Insurance. Evidence of the insurance coverage required by Section 6.8 of this Agreement.

(e) Consents. All necessary consents of shareholders and other third parties with respect to the execution, delivery and performance of this Agreement, the Warrants and the other Loan Documents.

(f) Legal Opinion. A customary legal opinion of each Co-Borrower's counsel, dated as of the Effective Date, in a form reasonably acceptable to the Lenders.

(g) Account Control Agreements. Account Control Agreements for all of each Co-Borrower's deposit accounts and securities accounts (other than any Excluded Accounts) maintained with Silicon Valley Bank, duly executed by all of the parties thereto.

(h) Grants of Security Interests in Intellectual Property. Subject to Section 6.10(d), grants of security interests in any U.S. federally registered Intellectual Property, in the forms provided by Lenders.

(i) [Reserved].

(j) [Reserved].

(k) [Reserved].

(l) [Reserved].

(m) [Reserved].

(n) [Reserved].

(o) [Reserved].

(p) Fees and Expenses. Payment of all fees and expenses then due hereunder or under any other Loan Document.

3.2 Conditions Precedent to Making Loan E, Loan F, Loan G and Loan H. The obligation of Lenders to make Loan E, Loan F, Loan G and Loan H on the Effective Date is further subject to satisfaction of the following conditions as of the Effective Date:

(a) No Default. No Default or Event of Default shall have occurred that has not been waived by Lenders.

(b) [Reserved].

(c) Note. Each Co-Borrower shall have duly executed and delivered a Note in the amount of Loan E to Horizon, a Note in the amount of Loan F to Horizon, a Note in the amount of Loan G to Horizon and a Note in the amount of Loan H to Horizon.

(d) Warrants. Borrower Representative shall have provided Lenders with Warrants, dated as of the Effective Date, duly executed by Borrower Representative, in form and substance acceptable to Lenders.

(e) UCC Financing Statements. Lenders shall have received such documents, instruments and agreements, including UCC financing statements or amendments to UCC financing statements and UCC financing statement searches, as Lenders shall reasonably request to evidence the perfection and priority of the security interests granted to Collateral Agent and Lenders pursuant to Section 4. Each Co-Borrower authorizes Collateral Agent, on behalf of itself and the Lenders, to file any UCC financing statements, continuations of or amendments to UCC financing statements it deems necessary to perfect the security interest of Collateral Agent and Lenders in the Collateral.

(f) Funding Certificate. Borrower Representative shall have duly executed and delivered to Lenders a Funding Certificate for such Loans.

(g) Representations and Warranties. The representations and warranties made by any Co-Borrower in Section 5 and in the other Loan Documents shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such Funding Date, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date).

3.3 [Reserved.]

3.4 [Reserved.]

3.5 Conditions Precedent to Making Loan I and Loan J. If Lenders elect, in their sole and absolute discretion, to make Loan I and/or Loan J, the obligation of Lenders to make Loan I or Loan J is further subject to satisfaction of the following conditions as of the applicable Funding Date:

(a) No Default. No Default or Event of Default shall have occurred that has not been waived by Lenders.

(b) Note. Each Co-Borrower shall have duly executed and delivered a Note in the amount of Loan I to Lenders and a Note in the amount of Loan J to Lenders.

(c) Warrants. Borrower Representative shall have provided Lenders with Warrants, dated as of such Funding Date, duly executed by Borrower Representative, in form and substance acceptable to Lenders.

(d) Funding Certificate. Borrower Representative shall have duly executed and delivered to Lenders a Funding Certificate for such Loans.

(e) Twelve-Month Trailing Net Revenue. Borrower Representative shall have provided evidence to Lenders acceptable to Lenders in their sole discretion that Co-Borrowers and their Subsidiaries have achieved Trailing Twelve-Month Net Revenue in an amount not less than $70,000,000 as of the last day of the calendar month immediately preceding the Funding Date of Loan I and Loan J.

(f) Representations and Warranties. The representations and warranties made by any Co-Borrower in Section 5 and in the other Loan Documents shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such Funding Date, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date).

3.6 Covenant to Deliver. Each Co-Borrower agrees (not as a condition but as a covenant) to deliver to Lenders each item required to be delivered to Lenders as a condition to each Loan, if such Loan is advanced. Each Co-Borrower expressly agrees that the extension of any Loan prior to the receipt by Lenders of any such item shall not constitute a waiver by Lenders of any Co-Borrower's obligation to deliver such item, and any such extension in the absence of a required item shall be in Lenders' sole discretion.

4. Creation of Security Interest.

4.1 Grant of Security Interests. Each Co-Borrower grants to Collateral Agent and Lenders a valid, continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt, full and complete payment of any and all Obligations and in order to secure prompt, full and complete performance by each Co-Borrower of each of its covenants and duties under each of the Loan Documents (other than the Warrants). The "Collateral" shall mean and include all right, title, interest, claims and demands of each Co-Borrower in the following:

(a) All goods (and embedded computer programs and supporting information included within the definition of "goods" under the Code) and equipment now owned or hereafter acquired, including all laboratory equipment, computer equipment, office equipment, machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

(b) All inventory now owned or hereafter acquired, including all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of any Co-Borrower's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and each Co-Borrower's books relating to any of the foregoing;

(c) All contract rights and general intangibles (including Intellectual Property), now owned or hereafter acquired, including goodwill, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, claims, software, computer programs, computer disks, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payment intangibles, commercial tort claims, payments of insurance and rights to payment of any kind;

(d) All now existing and hereafter arising accounts, contract rights, royalties, license rights, license fees and all other forms of obligations owing to any Co-Borrower arising out of the sale or lease of goods, the licensing of technology or the rendering of services by any Co-Borrower (subject, in each case, to the contractual rights of third parties to require funds received by any Co-Borrower to be expended in a particular manner), whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by any Co-Borrower and each Co-Borrower's books relating to any of the foregoing;

(e) All documents, cash, deposit accounts, letters of credit and letters of credit rights (whether or not the letter of credit is evidenced by a writing) and other supporting obligations, certificates of deposit, instruments, promissory notes, chattel paper (whether tangible or electronic) and investment property, including all securities, whether certificated or uncertificated, security entitlements, securities accounts, commodity contracts and commodity accounts, and all financial assets held in any securities account or otherwise, wherever located, now owned or hereafter acquired and each Co-Borrower's books relating to the foregoing; and

(f) To the extent not covered by clauses (a) through (e), all other personal property of each Co-Borrower, whether tangible or intangible, and any and all rights and interests in any of the above and the foregoing and, any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof, including insurance, condemnation, requisition or similar payments and proceeds of the sale or licensing of Intellectual Property.

Notwithstanding the foregoing, the Collateral shall not include any Excluded Property.

4.2 After-Acquired Property. If any Co-Borrower shall at any time acquire a commercial tort claim, as defined in the Code, with a value in excess of $250,000, Co-Borrowers shall promptly (and in any event, within one Business Day) notify Collateral Agent and Lenders in writing signed by Co-Borrowers of the brief details thereof and shall grant to Collateral Agent and Lenders in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to Collateral Agent and Lenders.

4.3 Duration of Security Interest. Collateral Agent's and Lenders' security interest in the Collateral shall continue until the release or other disposition of such Collateral as permitted by this Agreement or indefeasible payment in full and the satisfaction of all Obligations, and termination of Lenders' commitment to fund the Loans, whereupon such security interest shall automatically terminate, without delivery of any instrument or performance of any act by any party. Collateral Agent and Lenders shall, at Co-Borrowers' sole cost and expense, execute such further documents and take such further actions as may be reasonably necessary to make effective the release contemplated by this Section 4.3, including duly authorizing and delivering termination statements for filing in all relevant jurisdictions under the Code.

4.4 Location and Possession of Collateral. Except for tangible Collateral having an aggregate value not to exceed $250,000 and Collateral in transit, all tangible Collateral is and shall remain in the possession of Co-Borrowers at its location listed on the cover page hereof or as set forth in the Disclosure Schedule. Co-Borrowers shall remain in full possession, enjoyment and control of the Collateral (except only as may be otherwise required by Collateral Agent or Lenders for perfection of the security interests therein created hereunder) and so long as no Event of Default has occurred, shall be entitled to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided that the possession, enjoyment, control and use of the Collateral shall at all times be subject to the observance and performance of the terms of this Agreement.

4.5 Delivery of Additional Documentation Required. Each Co-Borrower shall from time to time execute and deliver to Collateral Agent and Lenders, at the reasonable request of Collateral Agent or Lenders, all financing statements and other documents Collateral Agent or Lenders may reasonably request, in form reasonably satisfactory to Collateral Agent and Lenders, to perfect and continue Collateral Agent's and Lenders' perfected security interests in the Collateral and in order to consummate fully all of the transactions contemplated under the Loan Documents.

4.6 Right to Inspect. Collateral Agent and Lenders (through any of their officers, employees, or agents) shall have the right, upon reasonable prior notice, from time to time, during each Co-Borrower's usual business hours, to inspect the books and records of each Co-Borrower and Subsidiaries and to make copies thereof and to inspect, test, and appraise the Collateral in order to verify each Co-Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral. Any inspection, discussion, test or appraisal conducted hereunder shall be conducted at the sole cost and expense of Co-Borrowers; provided that, the Co-Borrowers shall only be obligated to reimburse Collateral Agent and Lenders for the costs and expenses of one such inspection, test or appraisal per calendar year, unless an Event of Default has occurred and is continuing.

4.7 Intellectual Property.

(a) [Reserved].

(b) Co-Borrowers shall notify Lenders on or before the federal registration or filing by any Co-Borrower of any patent or patent application, or trademark or trademark application, or copyright or copyright application that is material to the business of any Co-Borrower, and at Lenders' reasonable request, Co-Borrowers shall promptly execute and deliver to Lenders any grants of security interests in same, in form acceptable to Lenders, to file with the United States Patent and Trademark Office or the United States Copyright Office, as applicable.

4.8 Protection of Intellectual Property. Each Co-Borrower shall:

(a) protect, defend and maintain the validity and enforceability of its Intellectual Property, subject to each Co-Borrower's reasonable business judgment and consistent with past business practices, and advise Collateral Agent in writing of material infringements upon becoming aware of the same;

(b) not allow any Intellectual Property material to any Co-Borrower's business to be abandoned, forfeited or dedicated to the public without Lenders' written consent, except as determined in such Co-Borrower's reasonable business judgment and consistent with past business practices;

(c) provide written notice to Collateral Agent within ten (10) Business Days of entering or becoming bound by any Restricted License; and

(d) take such commercially reasonable efforts to take such steps as Collateral Agent or Lenders reasonably request in writing to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Collateral Agent and Lenders to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Collateral Agent and Lenders to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Collateral Agent's or Lenders' rights and remedies under this Agreement and the other Loan Documents.

5. Representations and Warranties. Except as set forth in the Disclosure Schedule, each Co-Borrower represents and warrants as follows:

5.1 Organization and Qualification. Each Co-Borrower and its Subsidiaries is an entity duly organized and validly existing under the laws of its jurisdiction of incorporation or formation, as applicable, and qualified and licensed to do business in, and is in good standing in, any jurisdiction in which the conduct of its business or its ownership of Property requires that it be so qualified and licensed or in which the Collateral is located, except for such jurisdictions as to which any failure to so qualify would not have a Material Adverse Effect.

5.2 Authority. Each Co-Borrower has all necessary power and authority to execute, deliver, and perform in accordance with the terms thereof, the Loan Documents to which it is a party. Each Co-Borrower and its Subsidiaries has all requisite power and authority to own and operate their Property and to carry on their businesses as now conducted, except to the extent where the failure to do so would not reasonably be expected to have a Material Adverse Effect. Each Co-Borrower and its Subsidiaries have obtained all licenses, permits, approvals and other authorizations necessary for the operation of their business, except to the extent where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.3 Conflict with Other Instruments, etc. Neither the execution and delivery of any Loan Document to which any Co-Borrower is a party nor the consummation of the transactions therein contemplated (including the Castle Creek Mergers) nor compliance with the terms, conditions and provisions thereof will conflict with or result in a breach of any of the terms, conditions or provisions of the articles or certificate of incorporation or formation, as applicable, the by-laws, or any other organizational documents of any Co-Borrower or any law or any regulation, order, writ, injunction or decree of any court or Governmental Authority by which any Co-Borrower or any Subsidiary or any of their respective property or assets may be bound or affected, except where the breach of which would not reasonably be expected to have a Material Adverse Effect, or any material agreement or instrument to which any Co-Borrower is a party or by which it or any of its Property is bound or to which it or any of its Property is subject (including the Permitted Indebtedness Documents), or constitute a default thereunder or result in the creation or imposition of any Lien, other than Permitted Liens.

5.4 Authorization; Enforceability. The execution and delivery of this Agreement, the granting of the security interest in the Collateral, the incurrence of the Loans, the execution and delivery of the other Loan Documents to which any Co-Borrower is a party and the consummation of the transactions herein and therein contemplated have each been duly authorized by all necessary action on the part of each Co-Borrower. No authorization, consent, approval, license or exemption of, and no registration, qualification, designation, declaration or filing with, or notice to, any Person is, was or will be necessary to (a) the valid execution and delivery of any Loan Document to which any Co-Borrower is a party, (b) the performance of any Co-Borrower's obligations under any Loan Document or (c) the granting of the security interest in the Collateral, except for (i) filings in connection with the perfection of the security interest in any of the Collateral, (ii) those the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect, or (iii) the issuance of the Warrants. The Loan Documents have been duly executed and delivered and constitute legal, valid and binding obligations of each Co-Borrower, enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application relating to or affecting the enforcement of creditors' rights or by general principles of equity.

5.5 No Prior Encumbrances. Each Co-Borrower has good and marketable title to the Collateral, free and clear of Liens except for Permitted Liens. Each Co-Borrower has good title and ownership of, or is licensed under, all of such Co-Borrower's current Intellectual Property. Each Co-Borrower is the sole owner of the Intellectual Property which it owns or purports to own. Each issued patent which it owns or purports to own and which is material to any Co-Borrower's business is valid, and to the knowledge of such Co-Borrower, enforceable, and no part of the Intellectual Property which any Co-Borrower owns or purports to own and which is material to any Co-Borrower's business has been judged invalid or unenforceable, in whole or in part. No Co-Borrower is a party to, nor is it bound by, any Restricted License. No Co-Borrower has received any written communications alleging that any Co-Borrower has violated, or by conducting its business as proposed, would violate any Intellectual Property rights of any other Person in a material manner. No Co-Borrower has any knowledge of any infringement or violation by it of the Intellectual Property rights of any third party and has no knowledge of any violation or infringement by a third party of any of its Intellectual Property. The Collateral and the Intellectual Property constitute substantially all of the assets and property of Co-Borrowers, and each Co-Borrower owns or otherwise has the necessary rights to use all Intellectual Property that is material to with the business of such Co-Borrower and its Subsidiaries, free and clear of any Liens other than Permitted Liens.

5.6 Security Interest. The provisions of this Agreement create legal and valid security interests in the Collateral in favor of Collateral Agent and Lenders, and, assuming the proper filing of one or more financing statement(s) identifying the Collateral with the proper state and/or local authorities, the security interests in the Collateral granted to Collateral Agent and Lenders pursuant to this Agreement (a) constitute and will continue to constitute first priority security interests (except to the extent any Permitted Liens may have a superior priority to Collateral Agent's and Lenders' Liens under this Agreement) to the extent such security interest can be perfected by the filing of an appropriately prepared financing statement with the appropriate jurisdiction and (b) are and will continue to be superior and prior to the rights of all other creditors of each Co-Borrower (except to the extent any Permitted Liens may have a superior priority to Collateral Agent's and Lenders' Liens under this Agreement).

5.7 Name; Location of Chief Executive Office, Principal Place of Business and Collateral. No Co-Borrower has done any business under any name other than that specified on the signature page hereof. Each Co-Borrower's jurisdiction of incorporation or formation, as applicable, chief executive office, principal place of business, and the place where such Co-Borrower maintains its records concerning the Collateral are presently located in the state and at the address set forth on the cover page of this Agreement. As of the Effective Date, the Collateral is presently located at the address set forth on the cover page hereof or as set forth in the Disclosure Schedule.

5.8 Litigation. There are no actions or proceedings pending by or against any Co-Borrower or any Subsidiary before any court, arbitral tribunal, regulatory organization, administrative agency or similar body in which an adverse decision would reasonably be expected to have a Material Adverse Effect. No Co-Borrower has any knowledge of any such pending or threatened actions or proceedings.

5.9 Financial Statements. All financial statements relating to any Co-Borrower, any Subsidiary that have been or may hereafter be delivered by any Co-Borrower to Collateral Agent or Lenders present fairly in all material respects such Co-Borrower's Consolidated financial condition as of the date thereof and such Co-Borrower's Consolidated results of operations for the period then ended.

5.10 No Material Adverse Effect. No event has occurred and no condition exists which would reasonably be expected to have a Material Adverse Effect since December 31, 2024.

5.11 Full Disclosure. No representation, warranty or other statement made by any Co-Borrower in any Loan Document (including the Disclosure Schedule), certificate or written statement furnished to Collateral Agent or Lenders (other than any forecasts or projections), when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements, in light of the circumstances under which they are made, not materially misleading as of the time when made or delivered. All projections and forecasts delivered to Collateral Agent and Lenders by any Co-Borrower, represent the Co-Borrowers' good faith estimate of future financial performance and are based on assumptions believed by the Co-Borrowers to be fair and reasonable in light of current market conditions, it being acknowledged and agreed by Collateral Agent and Lenders that projections and forecasts as to future events are not to be viewed as facts and that the actual results during the period or periods covered by such projections or forecasts may differ from the projected or forecasted results and such differences may be material. There is no fact known to any Co-Borrower which materially adversely affects, or which could in the future be reasonably expected to materially adversely affect, its ability to perform its obligations under this Agreement.

5.12 Solvency, Etc. The Co-Borrowers, taken as a whole, are Solvent (as defined below) and, after the execution and delivery of the Loan Documents and the consummation of the transactions contemplated thereby, the Co-Borrowers, taken as a whole, will be Solvent. "Solvent" means, with respect to any Person on any date, that on such date (a) the fair value of the property of such Person is greater than the fair value of the liabilities (including contingent liabilities) of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital.

5.13 Subsidiaries. As of the Effective Date, no Co-Borrower has any Subsidiaries except as set forth in the Disclosure Schedule.

5.14 Capitalization. All issued and outstanding Equity Securities of each Co-Borrower and its Subsidiaries are duly authorized and validly issued, fully paid and non-assessable, and such securities were issued in compliance with all applicable state and federal laws concerning the issuance of securities, except for such compliance with such laws that would not reasonably be expected to result in a Material Adverse Effect.

5.15 Catastrophic Events; Labor Disputes. No Co-Borrower, nor any Subsidiary, nor any of their respective Property is or has been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or other casualty that would reasonably be expected to have a Material Adverse Effect. There are no disputes presently subject to grievance procedure, arbitration or litigation under any of the collective bargaining agreements, employment contracts or employee welfare or incentive plans to which any Co-Borrower or any Subsidiary is a party, and there are no strikes, lockouts, work stoppages or slowdowns, or, to the knowledge of any Co-Borrower, jurisdictional disputes or organizing activity occurring or threatened which would reasonably be expected to have a Material Adverse Effect.

5.16 No Present Intention to Terminate. To the knowledge of each Co-Borrower, no officer of any Co-Borrower, and no employee of any Co-Borrower whose termination, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, has any present intention of terminating his or her employment with such Co-Borrower.

5.17 No Plan Assets. No Co-Borrower nor any Subsidiary is an "employee benefit plan," as defined in Section 3(3) of ERISA, that is subject to Title I of ERISA, and none of the assets of any Co-Borrower or any Subsidiary constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) no Co-Borrower nor any Subsidiary is a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with any Co-Borrower or any Subsidiary are not subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Internal Revenue Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Loan Agreement.

5.18 Sanctions, Etc. No Co-Borrower, nor any Subsidiary, or, (i) to any Co-Borrower's knowledge, any director, officer, employee, or agent of any Co-Borrower or any Subsidiary, or (ii) to any Co-Borrower's actual knowledge, any Affiliate of any Co-Borrower or any Subsidiary, is a Person that is, or is owned or controlled by Persons that are, (a) the subject or target of any Sanctions, (b) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions or (c) a Restricted Entity. To the best of each Co-Borrower's knowledge, as of the Effective Date and at all times throughout the term of this Agreement, including after giving effect to any transfers of interests permitted pursuant to the Loan Documents, none of the funds of any Co-Borrower, any Subsidiary or, to any Co-Borrower's knowledge, of their respective Affiliates have been (or will be) derived from any unlawful activity with the result that the investment in the respective party (whether directly or indirectly), is prohibited by applicable law or the Loans are in violation of applicable law.

5.19 Regulatory Compliance. No Co-Borrower is a "bank holding company" or a direct or indirect subsidiary of a "bank holding company" as defined in the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder of the Board of Governors of the Federal Reserve System. No Co-Borrower nor any Subsidiary is an "investment company" or a company controlled by an "investment company" under the Investment Company Act of 1940. No Co-Borrower is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System) and no proceeds of any Loan will be used to purchase or carry margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

5.20 Payment of Taxes. All federal income and other material tax returns, reports and statements (including any required attachments thereto or amendments thereof) of each Co-Borrower and its Subsidiaries filed or required to be filed by any of them have been filed (or extensions have been obtained and such extensions have not expired) and all taxes shown on such tax returns as due and payable and all other material taxes imposed on each Co-Borrower and its Subsidiaries that are due and payable and all material governmental assessments, fees and other governmental charges upon any Co-Borrower, its Subsidiaries and their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable, except for the payment of any such taxes, assessments, fees and other governmental charges which are not yet delinquent or are being diligently contested by Co-Borrowers in good faith by appropriate proceedings and for which adequate reserves have been made under GAAP. To the knowledge of each Co-Borrower, no tax return of any Co-Borrower or any Subsidiary is currently under an audit or examination, and no Co-Borrower has received written notice of any proposed audit or examination, in each case, where a material amount of tax is at issue. No Co-Borrower is an "S corporation" within the meaning of Section 1361(a)(1) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code").

5.21 Anti-Terrorism Laws. No Co-Borrower will, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as lender, underwriter, advisor, investor or otherwise), or (iii) in any manner that would, directly or indirectly, benefit any Restricted Entity. Lenders hereby notify Co-Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Lenders' policies and practices, Lenders are required to obtain, verify and record certain information and documentation that identifies each Co-Borrower and its principals, which information includes the name and address of such Co-Borrower and its principals and such other information that will allow Lenders to identify such party in accordance with Anti-Terrorism Laws.

6. Affirmative Covenants. Each Co-Borrower, until the full and complete payment of the Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted), covenants and agrees that:

6.1 Good Standing. Each Co-Borrower shall maintain, and cause each of its Subsidiaries to maintain, its corporate existence and its good standing in its jurisdiction of incorporation or formation, as applicable, and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a Material Adverse Effect. Each Co-Borrower shall maintain, and cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, the loss of which would reasonably be expected to have a Material Adverse Effect.

6.2 Government Compliance. Each Co-Borrower shall comply, and cause each of its Subsidiaries to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could reasonably be expected to have a Material Adverse Effect.

6.3 Financial Statements, Reports, Certificates. Each Co-Borrower shall deliver to Lenders: (a) as soon as available, but in any event within 45 days after the end of each month, a Co-Borrower prepared balance sheet, income statement and cash flow statement covering such Co-Borrower's operations during such period and for the period beginning with the first day of the applicable fiscal year and ending on the last day of such month, and aging of Co-Borrower's accounts receivable and accounts payable, to the extent such financial materials are prepared and delivered to the members of the board of directors of such Co-Borrower, all certified by such Co-Borrower's president, treasurer or chief financial officer (each, a "Responsible Officer"); (b) as soon as available, but in any event within 90 days after the end of each Co-Borrower's fiscal year, audited Consolidated financial statements of each Co-Borrower prepared in accordance with GAAP, together with an unqualified opinion on such financial statements of a nationally recognized or other independent public accounting firm reasonably acceptable to Lenders; (c) as soon as available, but in any event within 30 days after the end of each Co-Borrower's fiscal year, such Co-Borrower's board-approved operating budget and plan for the next fiscal year; and (d) all such other information (including, without limitation, business or financial data, reports, appraisals and projections) concerning any Co-Borrower and its Subsidiaries, or their respective properties or business, as Lenders may reasonably request from time to time. In addition, each Co-Borrower shall deliver to Lenders (A) promptly upon becoming available, copies of all statements, reports and notices sent or made available generally by such Co-Borrower to its security holders, (B) promptly (and in any event, within one Business Day) upon receipt of notice thereof, a report of any material legal actions pending or threatened against any Co-Borrower or any Subsidiary or the commencement of any action, proceeding or governmental investigation involving any Co-Borrower or any Subsidiary is commenced that is reasonably expected to result in damages or costs to any Co-Borrower of $250,000 or more, (C) promptly following receipt, copies of any material notices (including notices of default) received in connection with any Material Contract, and (D) promptly upon receipt thereof, copies of all detailed financial and management reports submitted to any Co-Borrower by independent auditors in connection with each annual or interim audit made by those auditors of the books of any Co-Borrower. Documents required to be delivered pursuant to Section 6.3(a) or (b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower Representative files or furnishes such financial statements and other information with the Securities and Exchange Commission via the EDGAR filing system or any successor electronic delivery procedures; or (ii) on which such documents are posted on the Borrower Representative's behalf on an Internet or intranet website, if any, to which the Lenders have access (whether a commercial, third-party website or whether sponsored by the Lenders).

6.4 Certificates of Compliance. Each time financial statements are furnished pursuant to Section 6.3 above, Borrower Representative shall deliver to Lenders an Officer's Certificate signed by a Responsible Officer in the form of, and certifying to the matters set forth in Exhibit E hereto.

6.5 Notice of Defaults. As soon as possible, and in any event within (i) five (5) days after the discovery of a Default or an Event of Default and (ii) two (2) Business Days following receipt of written notice from Ligand of any breach, default or event of default under the Zelsuvmi License Agreement, Borrower Representative shall provide Lenders with a certificate certified by a Responsible Officer setting forth the facts relating to or giving rise to such Default, Event of Default or breach and the action which Co-Borrowers propose to take with respect thereto.

6.6 Taxes. Each Co-Borrower shall make, and cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes required by law to be paid or imposed upon any Property belonging to it, and will execute and deliver to Collateral Agent and Lenders, on demand, appropriate certificates attesting to the payment or deposit thereof; and each Co-Borrower will make, and cause each Subsidiary to make, timely payment or deposit of all material tax payments and withholding taxes required of it by applicable laws to be paid or withheld by it, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Collateral Agent and Lenders with proof satisfactory to Lenders indicating that such Co-Borrower and each Subsidiary has made such payments or deposits; provided that no Co-Borrower shall be required to make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings which suspend the collection thereof (provided, that such proceedings do not involve any substantial danger of the sale, forfeiture or loss of any material item of Collateral or Collateral which in the aggregate is material to any Co-Borrower and that Co-Borrowers have adequately bonded such amounts or reserves sufficient to discharge such amounts have been provided on the books of Co-Borrowers in accordance with GAAP).

6.7 Use; Maintenance. Each Co-Borrower shall keep and maintain all items of equipment and other similar types of personal property that form any significant portion or portions of the Collateral in good operating condition and repair (except for ordinary wear and tear incurred in the ordinary course of business) and shall make all necessary replacements thereof and renewals thereto so that the value and operating efficiency thereof shall at all times be maintained and preserved, except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect. No Co-Borrower shall permit any such material item of Collateral to become a fixture to real estate or an accession to other personal property, without the prior written consent of Collateral Agent and Lenders. No Co-Borrower shall permit any such material item of Collateral to be operated or maintained in violation of any applicable law, statute, rule or regulation, except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect. With respect to items of leased equipment (to the extent Collateral Agent and Lenders have any security interest in any residual Co-Borrower's interest in such equipment under the lease), Co-Borrowers shall keep, maintain, repair, replace and operate such leased equipment in accordance with the terms of the applicable lease, except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect.

6.8 Insurance. Each Co-Borrower shall keep its business and the Collateral insured for risks and in amounts standard for companies in such Co-Borrower's industry and location, and as Collateral Agent or Lenders may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Collateral Agent and Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent and Lenders as an additional loss payee and all liability policies shall show Collateral Agent and Lenders as an additional insured and all policies shall provide that the insurer must give Collateral Agent at least 30 days' notice before canceling its policy. At Collateral Agent's or Lenders' request, each Co-Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any property policy shall, at Collateral Agent's or Lenders' option, be payable to Collateral Agent, for the benefit of Lenders, or to Lenders on account of the Obligations. Notwithstanding the foregoing, so long as no Event of Default has occurred that has not been waived by Lenders, each Co-Borrower shall have the option of applying the proceeds of any property policy, toward the replacement or repair of destroyed or damaged property; provided that (a) any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent and Lenders have been granted a first priority security interest (subject to Permitted Liens) and (b) after the occurrence of an Event of Default all proceeds payable under such property policy shall, at the option of Collateral Agent or Lenders, be payable to Collateral Agent, for the benefit of Lenders, or to Lenders on account of the Obligations. If any Co-Borrower fails to obtain insurance as required under Section 6.8 or to pay any amount or furnish any required proof of payment to third persons and Collateral Agent, Collateral Agent or Lenders may make all or part of such payment or obtain such insurance policies required in Section 6.8, and take any action under the policies Collateral Agent or Lenders reasonably deem prudent. On or prior to the first Funding Date and prior to each policy renewal, each Co-Borrower shall furnish to Collateral Agent certificates of insurance or other evidence satisfactory to Collateral Agent that insurance complying with all of the above requirements is in effect.

6.9 Further Assurances. At any time, and from time to time, each Co-Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Collateral Agent or Lenders to make effective the purposes of this Agreement, including the continued perfection and priority of Collateral Agent's and Lenders' security interest in the Collateral.

6.10 Post-Closing Covenants.

(a) Landlord Agreements. Each Co-Borrower shall have used commercially reasonable efforts to provide Lenders with a Landlord Agreement executed and delivered by each landlord or third-party, as applicable, within forty-five (45) days of the Original Closing Date, for each location where any Co-Borrower's books and records and the Collateral is located (unless a Co-Borrower is the fee owner thereof. Notwithstanding the foregoing, each Co-Borrower shall use commercially reasonable efforts to provide Lenders with a Landlord Agreement executed and delivered by the landlord for the property located at (i) 4020 Stirrup Creek Dr., Suite 110 Durham, NC 27703, (ii) 4063 Stirrup Creek Drive, Durham, NC 27703, (iii) 4018 Stirrup Creek Drive, Durham, NC 27703, and (iv) 15 Ingram Blvd., Ste 200, La Vergne, TN 37086 within sixty (60) days of the Effective Date.

(b) Reedy Creek Intercreditor Agreement. Each Co-Borrower shall have used commercially reasonable efforts to provide Lenders with an intercreditor agreement, in form and substance substantially identical to the Intercreditor Agreements, executed and delivered by Reedy Creek, within forty-five (45) days of the Original Closing Date.

(c) Reedy Creek Purchase and Sale Agreement. Each Co-Borrower shall refrain from amending, restating, supplementing or otherwise modifying the Reedy Creek Purchase and Sale Agreement as in effect on the Original Closing Date until the earlier to occur of (i) delivery of an intercreditor agreement in form and substance substantially identical to the Intercreditor Agreement, executed and delivered by Reedy Creek and each Co-Borrower, and (ii) the full and complete payment of the Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted).

(d) Intellectual Property Grants. As of the Effective Date, each Existing Co-Borrower acknowledges and agrees that it has previously provided Lenders with grants of security interest in all of such Existing Co-Borrower's patents and patent applications, trademarks and trademark applications, and copyrights and copyright applications, including, without limitation, as listed on Schedule 6.10(d) of the Disclosure Schedule, in form acceptable to Lenders, to file with the United States Patent and Trademark Office or the United States Copyright Office, as applicable. Each Co-Borrower other than the Existing Co-Borrowers shall provide Lenders with grants of security interest in all of such Co-Borrower's patents and patent applications, trademarks and trademark applications, and copyrights and copyright applications, including, without limitation, as listed on Schedule 6.10(d) of the Disclosure Schedule, in form acceptable to Lenders, to file with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, within thirty (30) days of the Castle Creek Mergers Closing Date (or such later date as Lenders may agree in their reasonable discretion).

(e) Castle Creek Loan Payoff Amount. Concurrently with the consummation of the Castle Creek Mergers on the Castle Creek Mergers Closing Date, Co-Borrowers shall deliver to Lenders evidence reasonably satisfactory to Lenders that all Obligations (as defined in the Castle Creek Loan Agreement) outstanding under the Castle Creek Loan Agreement and the other Loan Documents (as defined therein) have been paid in full.

(f) Innovator Seller Notes Payoff Evidence. Concurrently with the consummation of the Castle Creek Mergers on the Castle Creek Mergers Closing Date, Co-Borrowers shall deliver to Lenders evidence reasonably satisfactory to Lenders that all obligations outstanding under the Innovator Seller Notes have been paid in full (it being agreed that Federal Reserve wire reference numbers confirming the payment of all obligations outstanding under the Innovator Seller Notes in accordance with the Mergers Funds Flow Memorandum shall constitute evidence reasonably satisfactory to Lenders for purposes of this Section 6.10(f)). Within five (5) Business Days after the Castle Creek Mergers Closing Date (or such later date as Lenders may agree in their reasonable discretion), Co-Borrowers shall deliver to Lenders evidence reasonably satisfactory to Lenders that (i) the Innovator Seller Notes have been cancelled and returned (or lost note affidavits delivered in lieu thereof) and (ii) all UCC financing statements and other filings, if any, relating to the Innovator Seller Notes have been terminated.

6.11 Subsidiaries. Each Co-Borrower, upon Lenders' or Collateral Agent's request, shall cause any Subsidiary (other than any Excluded Subsidiary) to provide Collateral Agent and Lenders with a guaranty of the Obligations and a security interest in such Subsidiary's assets to secure such guaranty.

6.12 Keeping of Books. Each Co-Borrower shall keep proper books of record and account, in which full and correct in all material respects entries shall be made of all financial transactions and the assets and business of such Co-Borrower and its Subsidiaries in accordance with GAAP.

6.13 Cash on Deposit.

(a) Commencing as of the Original Closing Date, and continuing until the date (the "Cash Covenant Milestone Date") on which Borrower Representative provides Lenders with evidence acceptable to Lenders in their sole discretion that Co-Borrowers have achieved Trailing Six-Month Net Revenue in an amount not less than $30,000,000 as of the last day of the calendar month immediately preceding the Cash Covenant Milestone Date, Co-Borrowers shall maintain cash on deposit, in accounts over which Lenders maintain an Account Control Agreement, in an aggregate amount not less than $10,000,000 at all times.

(b) Subject to Section 6.13(c), commencing as of the Cash Covenant Milestone Date and continuing until repayment in full of all Obligations, Co-Borrowers shall maintain cash on deposit, in accounts over which Collateral Agent maintains an Account Control Agreement, in an aggregate amount not less than $7,500,000 at all times.

(c) If at any time following the Cash Covenant Milestone Date, the Trailing Six-Month Net Revenue shall be less than $30,000,000 as of any date of determination, Co-Borrowers shall comply with Section 6.13(a) as though such Cash Covenant Milestone Date had not occurred.

(d) Each Co-Borrower shall take all steps reasonably required to ensure that Lenders obtain and maintain, until the indefeasible repayment in full of the Obligations, electronic, read-only access to each Co-Borrower's deposit accounts, to allow Lenders to view such deposit accounts, including the ability to view details on each transaction relating to each such deposit account.

6.14 Castle Creek Mergers Covenants.

(a) Consummation; No Amendments. Borrower Representative shall, and shall cause each of Castle Creek Merger Sub and Castle Creek Merger Sub II to, use commercially reasonable efforts to consummate the Castle Creek Mergers in accordance with the Castle Creek Merger Agreement and applicable law no later than the Castle Creek Mergers Outside Date; provided that nothing herein shall require any Co-Borrower to consummate the Castle Creek Mergers if any condition to its obligations under the Castle Creek Merger Agreement has not been satisfied, or restrict any Co-Borrower from terminating the Castle Creek Merger Agreement in accordance with its terms. Without the prior written consent of Lenders (not to be unreasonably withheld, conditioned or delayed), no Co-Borrower shall (and Borrower Representative shall cause Castle Creek Merger Sub and Castle Creek Merger Sub II not to) amend, supplement, waive or otherwise modify any provision of the Castle Creek Merger Agreement, or waive any condition to its respective obligations thereunder, in each case in any manner that is adverse to the interests of Lenders in any material respect (it being agreed that any increase in the cash consideration payable by any Co-Borrower, any assumption of Indebtedness by any Co-Borrower not permitted hereunder, and any change to the structure of the Castle Creek Mergers shall be deemed materially adverse to Lenders).

(b) Notices. Borrower Representative shall promptly (and in any event within two (2) Business Days) notify Lenders in writing of (i) the consummation of the Castle Creek Mergers, together with a copy of the filed certificates of merger, (ii) any termination or written notice of termination of the Castle Creek Merger Agreement, and (iii) any written notice of breach or default delivered or received under the Castle Creek Merger Agreement.

(c) Joinder of Castle Creek Sub. No later than the Castle Creek Mergers Closing Date (or such later date as Lenders may agree in their reasonable discretion) (the "Castle Creek Joinder Date"), Co-Borrowers shall cause Castle Creek Sub to (A) execute and deliver to Collateral Agent and Lenders a joinder agreement, in form and substance reasonably satisfactory to Lenders, pursuant to which each such Person shall become a Co-Borrower hereunder and grant to Collateral Agent and Lenders a first priority security interest (subject to Permitted Liens) in all of its assets constituting Collateral, (B) deliver such UCC financing statements, secretary's certificates, good standing certificates, legal opinions and other documents as Lenders may reasonably request, and, within thirty (30) days after the Castle Creek Mergers Closing Date (or such later date as Lenders may agree in their reasonable discretion), Account Control Agreements with respect to all of its deposit accounts and securities accounts (other than Excluded Accounts) and insurance endorsements, and, subject to Section 6.10(d), grants of security interests in its U.S. federally registered Intellectual Property, and (C) execute and deliver joinders to, or acknowledgments of, the Intercreditor Agreements and Subordination Agreements to the extent requested by Lenders. Concurrently therewith, Borrower Representative shall pledge to Collateral Agent all of the Equity Securities of Castle Creek Merger Sub II together with any certificates and undated stock powers or transfer powers executed in blank. No later than the Castle Creek Joinder Date, the Disclosure Schedule shall be supplemented to reflect Castle Creek Merger Sub II (as successor to Castle Creek) and Castle Creek Sub, in form and substance reasonably satisfactory to Lenders.

(d) Castle Creek Indebtedness. No later than the Castle Creek Joinder Date, Borrower Representative shall cause the entire outstanding balance of the Castle Creek Bridge Financing (including all principal, accrued interest and other amounts owing in respect thereof) to be discharged and to deliver copies of each Castle Creek Bridge Note issued under the Castle Creek Bridge Financing marked "cancelled" to Lenders.

(e) Castle Creek Assets Intercreditor Agreement. On the Castle Creek Mergers Closing Date, concurrently with the consummation of the First Merger, Borrower Representative shall execute, and shall cause Castle Creek, Castle Creek Merger Sub II and Castle Creek Sub to execute, and deliver to Collateral Agent and Lenders the Castle Creek Assets Intercreditor Agreement, duly executed by Ligand, as second lien agent.

7. Negative Covenants. Each Co-Borrower, until the full and complete payment of the Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted), covenants and agrees that such Co-Borrower shall not:

7.1 Chief Executive Office. Change its name, jurisdiction of incorporation or formation, as applicable, chief executive office, principal place of business or any of the items set forth in Section 1 of the Disclosure Schedule without 10 days' prior written notice to Collateral Agent.

7.2 Collateral Control. Subject to its rights under Sections 4.4 and 7.4, remove any items of Collateral from any Co-Borrower's facility located at the address(es) set forth on the cover page hereof or as set forth on the Disclosure Schedule.

7.3 Liens. Create, incur, allow or suffer, or permit any Subsidiary to create, incur, allow or suffer, any Lien on any of its property, or assign or convey any right to receive income, including the sale of any accounts except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this Agreement to have priority to Collateral Agent's and Lenders' Liens), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the benefit of Lenders, or Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting any Co-Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any Co-Borrower's or any Subsidiary's Intellectual Property, except (a) as otherwise permitted in Section 7.4 hereof and (b) as permitted in the definition of "Permitted Liens" herein.

7.4 Other Dispositions of Collateral. Convey, sell, lease or otherwise dispose of, or permit any Subsidiary to convey, sell, lease or otherwise dispose, of all or any part of the Collateral to any Person (collectively, a "Transfer"), except for: (a) Transfers of inventory in the ordinary course of business including due to quality control protocols rendering such inventory as non-salable; (b) Transfers of worn-out or obsolete equipment made in the ordinary course of business; (c) Transfers permitted under subsection (g) of the definition of "Permitted Liens" with respect to Collateral; (d) Transfers of cash equivalents in the ordinary course of business; (e) conversions of cash equivalents into cash or other cash equivalents; (f) Transfers of past due accounts receivable in the ordinary course of business (including any discount and/or forgiveness thereof) or, in the case of accounts receivable in default, in connection with the collection or compromise thereof and in any event, not involving any securitization thereof; (g) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business; (h) Transfers of property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding); (i) Transfers of property by (i) a Co-Borrower or any Subsidiary of a Co-Borrower to a Co-Borrower or (ii) Transfers by any Subsidiary that is not a guarantor of the Obligations to any other Subsidiary; (j) Transfers not otherwise permitted hereunder which are made for fair market value in an aggregate amount not to exceed $500,000 in any fiscal year, provided that at the time of such Transfer, no Event of Default shall exist or shall result from such Transfer; (k) to the extent constituting a Transfer, transactions permitted under Section 7.5; (1) the abandonment or cancellation of patents, trademarks, copyrights or other Intellectual Property which are, as of the date of abandonment, not material to the business of any Co-Borrower or any Subsidiary; (m) licenses of Intellectual Property permitted pursuant to clause (g) of the definition of Permitted Liens; (n) Transfers pursuant to the terms of the Permitted Indebtedness Documents; (o) Transfers of the Equity Securities and/or assets of Channel Pharmaceutical, Chromocell and their Subsidiaries so long as in the case of this clause (o), both (i) the proceeds of any such Transfer under this clause (o) are deposited and held in Accounts of Co-Borrowers that are subject to Account Control Agreements and (ii) either (1) such Transfer is approved by a majority of the members of the Board of Directors of Borrower Representative that are not representatives of Ligand or any Affiliates of Ligand, or (2) none of Ligand nor any Affiliate of Ligand is a purchaser of or investor in the Equity Securities and/or assets of Channel Pharmaceutical, Chromocell or their Subsidiaries, as applicable, in connection with the Transfer; (p) to the extent constituting a Transfer, no later than the Castle Creek Mergers Closing Date, each of (i) the payment of the Castle Creek Closing Payments in accordance with the Mergers Funds Flow Memorandum, (ii) the making of Investments permitted under clause (n) of the definition of "Permitted Investments," and (iii) the consummation of the Castle Creek Mergers in accordance with the Castle Creek Merger Agreement; and (q) to the extent constituting a Transfer, (i) the payment, issuance or delivery of the Castle Creek Contingent Consideration subject, in the case of any "Milestone Payment" or interest thereon, to the conditions set forth in Section 7.5(E) below and (ii) the sale of any Priority Review Voucher (as defined in the Castle Creek Merger Agreement) in a PRV Sale Transaction (as defined in the Castle Creek Merger Agreement), and the payment from the proceeds thereof of (A) the PRV Interest (as defined in the Castle Creek Merger Agreement) in accordance with Article IX of the Castle Creek Merger Agreement (including through the issuance of any Adjustment Contingent Shares (as defined in the Castle Creek Merger Agreement) in lieu of any portion thereof) and (B) the PRV Interest (as defined in the Castle Creek Purchased Assets Agreement) in accordance with the Castle Creek Royalty Financing Documents, and upon the consummation of any such PRV Sale Transaction the Liens of Collateral Agent and Lenders on such Priority Review Voucher shall be automatically released.

7.5 Distributions. (a) Pay any dividends or make any distributions, or permit any Subsidiary to pay any dividends or make any distributions, on their respective Equity Securities; (b) purchase, redeem, retire, defease or otherwise acquire, or permit any Subsidiary to purchase, redeem, retire, defease or otherwise acquire, for value any of their respective Equity Securities (other than repurchases or similar payments with respect to equity or equity-like securities pursuant to the terms of employee stock purchase plans, employee restricted stock agreements or similar arrangements in an aggregate amount not to exceed $250,000 in any fiscal year); (c) return, or permit any Subsidiary to return, any capital to any holder of its Equity Securities as such (other than repurchases or similar payments with respect to equity or equity-like securities pursuant to the terms of employee stock purchase plans, employee restricted stock agreements or other similar arrangements); (d) make, or permit any Subsidiary to make, any distribution of assets, Equity Securities, obligations or securities to any holder of its Equity Securities as such; or (e) set apart any sum for any such purpose; provided, however, (A) any Co-Borrower or Subsidiary may pay dividends solely to a Co-Borrower or another wholly-owned Subsidiary (other than any Excluded Subsidiary), (B) any Co-Borrower or Subsidiary may pay dividends payable solely in such Co-Borrower's or a Subsidiary's common stock, (C) as otherwise permitted under Section 7.4 of this Agreement, (D) in connection with the Castle Creek Mergers and in accordance with the Castle Creek Merger Agreement, (1) Borrower Representative may issue its Equity Securities as merger consideration to the equityholders of Castle Creek (including any Escrow Shares (as defined in the Castle Creek Merger Agreement)) and may issue Series B Preferred Stock pursuant to the Castle Creek Bridge Closing Credit, and (2) Borrower Representative may make cash payments in lieu of the issuance of fractional shares and, to the extent required by applicable law, payments to holders of Castle Creek Equity Securities who properly exercise appraisal or dissenters' rights, in an aggregate amount under this clause (2) not to exceed $250,000, (E) Borrower Representative and Castle Creek Merger Sub II may pay, issue or deliver the Castle Creek Contingent Consideration when due in accordance with Article IX of the Castle Creek Merger Agreement as in effect on the Effective Date; provided, however, that as a condition of making any "Milestone Payment" or interest thereon (as defined in the Castle Creek Mergers Agreement), (i) no Specified Event of Default shall then exist or would exist after giving effect thereto (and Collateral Agent and Lenders shall have received an Officer's Certificate demonstrating pro forma compliance after giving effect to such payment) and (ii) Borrower Representative shall have delivered to Collateral Agent and Lenders the applicable "Milestone Achievement Notice" (as defined in the Castle Creek Merger Agreement) at the time delivered by Borrower Representative, along with such other information reasonably requested by Collateral Agent or Lenders in accordance with Section 6.3(d) (it being understood that the PRV Interest and any Contingent Shares or other non-cash Castle Creek Contingent Consideration may be paid, issued or delivered at any time) and (F) (i) the issuance of common stock upon conversion of the Series A Preferred Stock, the Series B Preferred Stock or the Xepi Convertible Notes, and (ii) any payment or delivery required in connection with any such conversion under the terms of the applicable Certificate of Designations, Securities Purchase Agreement or Xepi Convertible Note, including cash in lieu of fractional shares, buy-in payments, liquidated damages and reinstatement of the converted amount; provided that cash payments under clause (ii) shall not exceed $250,000 in any fiscal year.

7.6 Mergers or Acquisitions. Merge or consolidate, or permit any Subsidiary to merge or consolidate, with or into any other Person or acquire, or permit any Subsidiary to acquire, all or substantially all of the capital stock or assets of another Person; provided that (a) any Subsidiary may merge into another Subsidiary (other than any Excluded Subsidiary), (b) any Subsidiary may merge into any Co-Borrower so long as such Co-Borrower is the surviving entity, (c) a Subsidiary may become a Subsidiary of another Co-Borrower, (d) any Co-Borrower may consummate a Permitted Acquisition, and (e) Borrower Representative may (i) form each of Castle Creek Merger Sub and Castle Creek Merger Sub II, and (ii) consummate the Castle Creek Mergers in accordance with the provisions of the Castle Creek Merger Agreement as in effect on the Effective Date (as amended, supplemented or otherwise modified in accordance with Section 6.14(a)) and subject to compliance with Section 6.14 (the foregoing clause (e), the "Castle Creek Merger Consent").

7.7 Change in Business or Ownership. Engage, or permit any Subsidiary to engage, in any business other than the businesses currently engaged in by such Co-Borrower or such Subsidiary, as applicable, or reasonably related, similar or incidental thereto or have a material change in such Co-Borrower's ownership equal to or greater than fifty percent (50%) other than to venture capital investors so long as such Co-Borrower identifies to Collateral Agent and Lenders the venture capital investors prior to the execution of a definitive agreement relating to such change of ownership and any such venture capital investors that purchase or otherwise acquire twenty-five percent (25%) or more of the ownership of such Co-Borrower in one or a series of transactions have cleared Lenders' "know your customer" checks. For the avoidance of doubt, nothing contained in this Agreement shall preclude Borrower Representative from dissolving or disposing of Channel Pharmaceutical and/or Chromocell, so long as such dissolution or disposition is made in conformity with the obligations set forth in Section 7.4(o) above and Borrower Representative promptly provides Collateral Agent and Lenders with evidence of the same.

7.8 Transactions With Affiliates; Creation of Subsidiaries. (a) Enter, or permit any Subsidiary to enter, into any contractual obligation with any Affiliate or engage in any other transaction with any Affiliate except (i) existing transactions that have occurred or are in effect as of the Original Closing Date (or, in the case of Castle Creek Merger Sub II and Castle Creek Sub, the Castle Creek Mergers Closing Date) and as set forth on the Disclosure Schedule (as supplemented pursuant to Section 6.14(c)) ("Disclosed Affiliate Transactions"), and including agreements entered into after the Original Closing Date that are related to such Disclosed Affiliate Transactions, (ii) upon terms at least as favorable to such Co-Borrower or such Subsidiary, as applicable, as an arms-length transaction with Persons who are not Affiliates of such Co-Borrower, (iii) as otherwise permitted under Section 7.4 of this Agreement, or (iv) the Castle Creek Mergers in accordance with the terms of the Castle Creek Merger Agreement (including the payment, issuance or delivery of the Castle Creek Contingent Consideration to any Participating Securityholder (as defined in the Castle Creek Merger Agreement) or the Securityholder Representative that is an Affiliate of any Co-Borrower), the Castle Creek Bridge Closing Credit (including the issuance of Series B Preferred Stock to any holder of a Castle Creek Bridge Note that is an Affiliate of any Co-Borrower), and the payment of the Innovator Seller Note Payoff Amount (including to Ligand or any other holder that is an Affiliate of any Co-Borrower), in each case in accordance with the terms hereof, or (b) create a Subsidiary without providing at least five (5) Business Days advance notice thereof to Lenders and, if requested by Lenders, such Subsidiary guarantees the Obligations and grants a security interest in its assets to secure such guaranty, in each case on terms reasonably satisfactory to Collateral Agent and Lenders; provided that Lenders acknowledge receipt of notice of the formation of each of Castle Creek Merger Sub and Castle Creek Merger Sub II for purposes of this clause (b), and the joinder of Castle Creek Sub shall be governed by Section 6.14(c).

7.9 Indebtedness Payments. Prepay, redeem, purchase, defease or otherwise satisfy in any manner prior to the scheduled repayment thereof any Indebtedness for borrowed money (other than (a) Permitted Indebtedness and amounts due or permitted to be prepaid under this Agreement, or otherwise in accordance with any applicable intercreditor or subordination agreement including any corresponding Intercreditor Agreement or Subordination Agreement, as applicable, and (b) the payment on the Castle Creek Mergers Closing Date of the Castle Creek Loan Payoff Amount and the Innovator Seller Note Payoff Amount in accordance with the Mergers Funds Flow Memorandum); provided that the assignment and cancellation of the Castle Creek Bridge Notes shall be governed exclusively by Section 6.14(d).

7.10 Indebtedness. Create, incur, assume or permit, or permit any Subsidiary to create, incur, or permit to exist, any Indebtedness except for Permitted Indebtedness.

7.11 Investments. Make, or permit any Subsidiary to make, any Investment except for Permitted Investments.

7.12 Compliance. (a) Become, or permit any Subsidiary to become, an "investment company" or a company controlled by an "investment company" under the Investment Company Act of 1940, or undertake as one of its important activities, extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Loan for that purpose; (b) become, or permit any Subsidiary to become, subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money; or (c) (i) fail, or permit any Subsidiary to fail, to meet the minimum funding requirements of the Employee Retirement Income Security Act of 1974, and its regulations, as amended from time to time ("ERISA") that could reasonably be expected to have a Material Adverse Effect, or (ii) permit, or permit any Subsidiary to permit, any nonexempt Reportable Event or Prohibited Transaction, as defined in ERISA Section 4043(c) (other than for which the 30-day notice period has not been waived) and ERISA Section 406 and Code Section 4975 of the Internal Revenue Code, respectively, to occur that could reasonably be expected to have a Material Adverse Effect; (d) fail, or permit any Subsidiary to fail, to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Effect.

7.13 Maintenance of Accounts. Except for Excluded Accounts, (a) maintain any deposit account or securities account except accounts with respect to which Collateral Agent and Lenders have obtained a perfected security interest in such accounts through one or more Account Control Agreements or (b) grant or allow any other Person (other than Collateral Agent or Lenders) to perfect a security interest in, or enter into any agreements with any Persons (other than Collateral Agent or Lenders) accomplishing perfection via control as to, any of its deposit accounts or securities accounts (other than with respect to the Lockbox Account and Collection Account (each as defined in the Castle Creek Purchased Assets Agreement) in accordance with Section 2.4 of the Castle Creek Purchased Assets Agreement); provided that the deposit accounts and securities accounts of Castle Creek Sub shall be subject to this Section 7.13 from and after the Castle Creek Joinder Date.

7.14 Negative Pledge Regarding Intellectual Property. Create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, any Lien of any kind upon any of its Intellectual Property or Transfer any such Intellectual Property, whether now owned or hereafter acquired, other than Permitted Liens or as permitted by Section 7.4.

8. Events of Default. Any one or more of the following events shall constitute an "Event of Default" by Co-Borrowers under this Agreement:

8.1 Failure to Pay. If any Co-Borrower fails to pay when due and payable or when declared due and payable in accordance with the Loan Documents: (a) any Scheduled Payment on the relevant Payment Date or on the relevant Maturity Date; or (b) any other portion of the Obligations within five (5) days after receipt of written notice from Lenders that such payment is due.

8.2 Certain Covenant Defaults. If any Co-Borrower fails to perform any obligation arising under Sections 6.5, 6.10(e), 6.10(f), 6.11, 6.13 or 6.14 or violates any of the covenants contained in Section 7 of this Agreement.

8.3 Other Covenant Defaults. If any Co-Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant, or agreement contained in this Agreement (other than as set forth in Sections 8.1, 8.2 or 8.4 through 8.14), or in any of the other Loan Documents and Co-Borrowers have failed to cure such default within 20 days of the occurrence of such default. During this 20-day period, the failure to cure the default is not an Event of Default but no Loan will be made during the cure period.

8.4 Material Adverse Effect. If there occurs a Material Adverse Effect.

8.5 Zelsuvmi License Agreement. Any material breach shall exist and be continuing under the Zelsuvmi License Agreement for which Ligand has delivered written notice to any Co-Borrower, which results in a right by Ligand, whether or not exercised, to terminate the Zelsuvmi License Agreement.

8.6 Seizure of Assets, Etc. (a) If any material portion of any Co-Borrower's or any Subsidiary's assets (i) is attached, seized, subjected to a writ or distress warrant, or is levied upon or (ii) comes into the possession of any trustee, receiver or Person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within 20 days, (b) if any Co-Borrower or any Subsidiary is enjoined, restrained or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, (c) if a judgment or other claim becomes a lien or encumbrance upon any material portion of any Co-Borrower's or any Subsidiary's assets or (d) if a notice of lien, levy, or assessment is filed of record with respect to any Co-Borrower's or any Subsidiary's assets by the United States Government, or any department agency or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within 20 days after any Co-Borrower receives notice thereof; provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by such Co-Borrower.

8.7 Service of Process. (a) The service of process upon Collateral Agent or Lenders seeking to attach by a trustee or other process any funds of any Co-Borrower on deposit or otherwise held by Collateral Agent or Lenders, (b) the delivery upon Collateral Agent or Lenders of a notice of foreclosure by any Person seeking to attach or foreclose on any funds of any Co-Borrower on deposit or otherwise held by Collateral Agent or Lenders or (c) the delivery of a notice of foreclosure or exclusive control to any entity holding or maintaining any Co-Borrower's deposit accounts or accounts holding securities by any Person (other than Collateral Agent or Lenders) seeking to foreclose or attach any such accounts or securities.

8.8 Default on Indebtedness. Any Event of Default shall exist and be continuing under any agreement with any third party or parties which consists of the failure to pay any Indebtedness for borrowed money of any Co-Borrower or any Subsidiary at maturity or which results in a right by such third party or parties, whether or not exercised, to accelerate the maturity of Indebtedness in an aggregate amount in excess of $500,000.

8.9 Judgments. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least $500,000 shall be rendered against any Co-Borrower or any Subsidiary and shall remain unsatisfied and unstayed for a period of 30 days or more.

8.10 Misrepresentations. If any material misrepresentation or material misstatement exists now or hereafter in any warranty, representation, statement, certification, or report made to Collateral Agent or Lenders by any Co-Borrower.

8.11 Breach of Warrant. If Borrower Representative shall breach any material term of any Warrant.

8.12 Unenforceable Loan Document. If any Loan Document shall in any material respect cease to be, or any Co-Borrower shall assert that any Loan Document is not, a legal, valid and binding obligation of such Co-Borrower enforceable in accordance with its terms.

8.13 Involuntary Insolvency Proceeding. (a) If a proceeding shall have been instituted in a court having jurisdiction in the premises (i) seeking a decree or order for relief in respect of any Co-Borrower or any Subsidiary in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) for the appointment of a receiver, liquidator, administrator, assignee, custodian, trustee (or similar official) of any Co-Borrower or any Subsidiary or for any substantial part of its Property or (iii) for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of 45 consecutive days or (b) such court shall enter a decree or order granting the relief sought in any such proceeding.

8.14 Voluntary Insolvency Proceeding. If any Co-Borrower or any Subsidiary shall (a) commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, (b) consent to the entry of an order for relief in an involuntary case under any such law, (c) consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian (or other similar official) of any Co-Borrower or any Subsidiary or for any substantial part of its Property, (d) shall make a general assignment for the benefit of creditors, (e) shall fail generally to pay its debts as they become due or (f) take any corporate action in furtherance of any of the foregoing.

9. Lenders' Rights and Remedies.

9.1 Rights and Remedies. Upon the occurrence of any Default or Event of Default, Lenders shall not have any further obligation to advance money or extend credit to or for the benefit of any Co-Borrower. In addition, upon the occurrence of an Event of Default, Collateral Agent and Lenders, so long as such Event of Default has not been waived by Lenders in writing, shall have the rights, options, duties and remedies of a secured party as permitted by law and, in addition to and without limitation of the foregoing, Collateral Agent, on behalf of Lenders, may, at its election, without notice of election and without demand, do any one or more of the following, all of which are authorized by each Co-Borrower:

(a) Acceleration of Obligations. Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, including (i) any accrued and unpaid interest, (ii) the amounts which would have otherwise come due under Section 2.3(b)(ii) if the Loans had been voluntarily prepaid, (iii) the unpaid principal balance of the Loans and (iv) all other sums, if any, that shall have become due and payable hereunder, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.13, or 8.14 all Obligations shall become immediately due and payable without any action by Collateral Agent or Lenders);

(b) Protection of Collateral. Make such payments and do such acts as Collateral Agent or Lenders consider necessary or reasonable to protect Collateral Agent's and Lenders' security interest in the Collateral. Each Co-Borrower agrees to assemble the Collateral if Collateral Agent or Lenders so require and to make the Collateral available to Collateral Agent or Lenders as Collateral Agent or Lenders may designate. Each Co-Borrower authorizes Collateral Agent, Lenders and their designees and agents to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any Lien which in Collateral Agent's or Lenders' determination appears or is claimed to be prior or superior to their security interest and to pay all expenses incurred in connection therewith. With respect to any Co-Borrower's owned premises, each Co-Borrower hereby grants Collateral Agent and Lenders a license to enter into possession of such premises and to occupy the same, without charge, for up to one hundred twenty (120) days in order to exercise any of Collateral Agent's and Lenders' rights or remedies provided herein, at law, in equity, or otherwise;

(c) Preparation of Collateral for Sale. Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Collateral Agent, Lenders and their agents and any purchasers at or after foreclosure are hereby granted a non-exclusive, fully paid, royalty-free license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, each Co-Borrower's Intellectual Property, including labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any Intellectual Property of a similar nature, now or at any time hereafter owned or acquired by any Co-Borrower or in which any Co-Borrower now or at any time hereafter has any rights; provided that such license (i) shall only be exercisable in connection with the disposition of Collateral upon Collateral Agent's or Lenders' exercise of their remedies hereunder; (ii) may be exercised only upon the occurrence and so long as such Event of Default has not been waived by Lenders in writing; and (iii) applies to the use of the Co-Borrower's owned trademarks in connection with goods and services of similar type and quality to those theretofore sold by any Co-Borrower under such trademark and consistent with the historical use (including the associated standards of quality) of such trademark and the activities conducted thereunder;

(d) Sale of Collateral. Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including any Co-Borrower's premises) as Collateral Agent or Lenders determine are commercially reasonable; and

(e) Purchase of Collateral. Credit bid and purchase all or any portion of the Collateral at any public sale.

Any deficiency that exists after disposition of the Collateral as provided above will be paid promptly (and in any event, within one Business Day) by Co-Borrowers.

9.2 Set Off Right. Upon the occurrence of an Event of Default and so long as such Event of Default has not been waived by Lenders in writing, Collateral Agent and Lenders may set off and apply to the Obligations any and all Indebtedness at any time owing to or for the credit or the account of any Co-Borrower or any other assets of any Co-Borrower in Collateral Agent's or Lenders' possession or control.

9.3 Effect of Sale. Upon the occurrence of an Event of Default and so long as such Event of Default has not been waived by Lenders in writing, to the extent permitted by law, each Co-Borrower covenants that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisement of the Collateral or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, except as to rights expressly provided herein, hereby expressly waives for itself and on behalf of each and every Person, except decree or judgment creditors of any Co-Borrower, acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to Collateral Agent or Lenders, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of each Co-Borrower in and to the Property sold, and shall be a perpetual bar, both at law and in equity, against each Co-Borrower, its successors and assigns, and against any and all Persons claiming the Property sold or any part thereof under, by or through any Co-Borrower, its successors or assigns.

9.4 Power of Attorney in Respect of the Collateral. Each Co-Borrower does hereby irrevocably appoint Collateral Agent, on behalf of Lenders (which appointment is coupled with an interest) the true and lawful attorney in fact of such Co-Borrower, with full power of substitution and in its name to file any notices of security interests, financing statements and continuations and amendments thereof pursuant to the Code or federal law, as may be necessary to perfect or to continue the perfection of Collateral Agent's and Lenders' security interests in the Collateral. Each Co-Borrower does hereby irrevocably appoint Collateral Agent, on behalf of Lenders (which appointment is coupled with an interest) on the occurrence of an Event of Default which has not been waived by Lenders in writing, the true and lawful attorney in fact of such Co-Borrower, with full power of substitution and in its name: (a) to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, issues, profits, avails, distributions, income, payment draws and other sums in which a security interest is granted under Section 4 with full power to settle, adjust or compromise any claim thereunder as fully as if Collateral Agent or Lenders were such Co-Borrower itself; (b) to receive payment of and to endorse the name of such Co-Borrower to any items of Collateral (including checks, drafts and other orders for the payment of money) that come into Collateral Agent's or Lenders' possession or under Collateral Agent's or Lenders' control; (c) to make all demands, consents and waivers, or take any other action with respect to, the Collateral; (d) in Collateral Agent's or Lenders' reasonable discretion to file any claim or take any other action or proceedings, either in its own name or in the name of such Co-Borrower or otherwise, which Collateral Agent or Lenders may reasonably deem necessary or appropriate to protect and preserve the right, title and interest of Collateral Agent and Lenders in and to the Collateral; (e) endorse such Co-Borrower's name on any checks or other forms of payment or security; (f) sign such Co-Borrower's name on any invoice or bill of lading for any account or drafts against account debtors; (g) make, settle, and adjust all claims under such Co-Borrower's insurance policies; (h) settle and adjust disputes and claims about the accounts directly with account debtors, for amounts and on terms Collateral Agent or Lenders determine reasonable; (i) transfer the Collateral into the name of Collateral Agent, Lenders or a third party as the Code permits; and (j) to otherwise act with respect thereto as though Collateral Agent or Lenders were the outright owner of the Collateral.

9.5 Lenders' Expenses. If any Co-Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Collateral Agent or Lenders may do any or all of the following: (a) make payment of the same or any part thereof; or (b) obtain and maintain insurance policies of the type discussed in Section 6.8 of this Agreement, and take any action with respect to such policies as Collateral Agent or Lenders reasonably deem prudent. Any amounts paid or deposited by Collateral Agent or Lenders shall constitute Lenders' Expenses, shall be immediately due and payable, shall bear interest at the Default Rate and shall be secured by the Collateral. Any payments made by Collateral Agent or Lenders shall not constitute an agreement by Collateral Agent or Lenders to make similar payments in the future or a waiver by Collateral Agent or Lenders of any Event of Default under this Agreement. Co-Borrowers shall pay all reasonable fees and expenses, including Lenders' Expenses, incurred by Collateral Agent or Lenders in the enforcement or attempt to enforce any of the Obligations hereunder not performed when due.

9.6 Remedies Cumulative; Independent Nature of Lenders' Rights. Collateral Agent's and Lenders' rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Collateral Agent and Lenders shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No failure on the part of Collateral Agent or Lenders to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right. The Obligations of each Co-Borrower to Lenders or Collateral Agent may be enforced by Lenders or Collateral Agent against any Co-Borrower in accordance with the terms of this Agreement and the other Loan Documents and, to the fullest extent permitted by applicable law, it shall not be necessary for Collateral Agent or Lenders, as applicable, to be joined as an additional party in any proceeding to enforce such Obligations.

9.7 Application of Collateral Proceeds. The proceeds and/or avails of the Collateral, or any part thereof, and the proceeds and the avails of any remedy hereunder (as well as any other amounts of any kind held by Collateral Agent or Lenders, at the time of or received by Collateral Agent or Lenders after the occurrence of an Event of Default hereunder and so long as such Event of Default has not been waived by Lenders in writing) shall be paid to and applied as follows:

(a) First, to the payment of out-of-pocket costs and expenses, including all amounts expended to preserve the value of the Collateral, of foreclosure or suit, if any, and of such sale and the exercise of any other rights or remedies, and of all proper fees, expenses, liability and advances, including reasonable legal expenses and attorneys' fees, incurred or made hereunder by Collateral Agent or Lenders, including Lenders' Expenses;

(b) Second, to the payment to Lenders of the amount then owing or unpaid on the Loans for any accrued and unpaid interest, the amounts which would have otherwise come due under Section 2.3(b)(ii), if the Loans had been voluntarily prepaid, the principal balance of the Loans, and all other Obligations with respect to the Loans (provided, however, if such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Loans, then *first*, to the unpaid interest thereon ratably, *second*, to the amounts which would have otherwise come due under Section 2.3(b)(ii) ratably, if the Loans had been voluntarily prepaid, *third*, to the principal balance of the Loans ratably, and *fourth*, to the ratable payment of other amounts then payable to Lenders under any of the Loan Documents); and

(c) Third, to the payment of the surplus, if any, to Co-Borrowers, their successors and assigns or to the Person lawfully entitled to receive the same.

9.8 Reinstatement of Rights. If Collateral Agent or Lenders shall have proceeded to enforce any right under this Agreement or any other Loan Document by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then and in every such case (unless otherwise ordered by a court of competent jurisdiction), Collateral Agent and Lenders shall be restored to their former position and rights hereunder with respect to the Property subject to the security interest created under this Agreement.

9.9 [Reserved].

10. Waivers; Indemnification.

10.1 Demand; Protest. Each Co-Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Collateral Agent or Lenders on which any Co-Borrower may in any way be liable.

10.2 Lenders' Liability for Collateral. So long as Collateral Agent and Lenders comply with their obligations, if any, under the Code, neither Collateral Agent nor Lenders shall in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause other than Collateral Agent's or Lenders' gross negligence or willful misconduct; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Co-Borrowers.

10.3 Indemnification and Waiver. Whether or not the transactions contemplated hereby shall be consummated:

(a) General Indemnity. Each Co-Borrower agrees upon demand to pay or reimburse Collateral Agent and Lenders for all liabilities, obligations and out-of-pocket expenses, including Lenders' Expenses and reasonable fees and expenses of counsel for Collateral Agent and Lenders from time to time arising in connection with the enforcement or collection of sums due under the Loan Documents, and in connection with any amendment or modification of the Loan Documents or any "work-out" in connection with the Loan Documents. Each Co-Borrower shall indemnify, reimburse and hold Collateral Agent, Lenders, and each of their respective successors, assigns, agents, attorneys, officers, directors, equity holders, servants, agents and employees (each an "Indemnified Person") harmless from and against all liabilities, losses, damages, actions, suits, demands, claims of any kind and nature (including claims relating to environmental discharge, cleanup or compliance), all costs and expenses whatsoever to the extent they may be incurred or suffered by such Indemnified Person in connection therewith (including reasonable attorneys' fees and expenses), fines, penalties (and other charges of any applicable Governmental Authority), licensing fees relating to any item of Collateral, damage to or loss of use of property (including consequential or special damages to third parties or damages to any Co-Borrower's property), or bodily injury to or death of any person (including any agent or employee of any Co-Borrower) (each, a "Claim"), directly or indirectly relating to or arising out of the use of the proceeds of the Loans or otherwise (including any Claim against an Indemnified Person by any party to the Castle Creek Merger Agreement (other than a Co-Borrower), any holder of a Castle Creek Bridge Note, any holder of an Innovator Seller Note or any equityholder of Castle Creek or Borrower Representative arising out of or relating to the Castle Creek Mergers or the transactions contemplated hereby), the falsity of any representation or warranty of any Co-Borrower or any Co-Borrower's failure to comply with the terms of this Agreement or any other Loan Document. The foregoing indemnity shall cover, without limitation, (i) any Claim in connection with a design or other defect (latent or patent) in any item of equipment or product included in the Collateral, (ii) any Claim for infringement of any Intellectual Property arising from any Co-Borrower's actions (and excluding, for the sake of clarity, any Claims arising from the Collateral Agent's and/or Lenders' use of the Co-Borrower's Intellectual Property pursuant to Section 9.1(e)), (iii) any Claim resulting from the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials on the premises owned, occupied or leased by any Co-Borrower, including any Claims asserted or arising under any Environmental Law, (iv) any Claim for negligence or strict or absolute liability in tort or (v) any Claim asserted as to or arising under any Account Control Agreement or any Landlord Agreement; provided, however, no Co-Borrower shall indemnify any Indemnified Person for any liability (x) incurred by such Indemnified Person as a primary result of such Indemnified Person's gross negligence or willful misconduct, (y) to the extent such Indemnified Person is in material breach of its duties hereunder, or (z) to the extent such liability has resulted primarily from a dispute solely among Indemnified Persons not arising out of any act or omission on the part of the Co-Borrowers or their Affiliates. Such indemnities shall continue in full force and effect, notwithstanding the expiration or termination of this Agreement. Upon Collateral Agent's or Lenders' written demand, Co-Borrowers shall assume and diligently conduct, at their sole cost and expense, the entire defense of the Indemnified Persons against any indemnified Claim described in this Section 10.3(a); provided that Co-Borrower's obligation to pay for such defense shall be limited to the reasonable and documented fees and disbursements of one external counsel on behalf of all Indemnified Persons. Co-Borrowers shall not settle or compromise any Claim against or involving Collateral Agent or Lenders without first obtaining Collateral Agent's or Lenders' written consent thereto, which consent shall not be unreasonably withheld. This Section 10.3(a) shall not apply with respect to taxes, other than taxes with respect to a non-tax claim.

(b) Waiver. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANYWHERE ELSE, EACH CO-BORROWER AGREES THAT IT SHALL NOT SEEK FROM COLLATERAL AGENT OR LENDERS UNDER ANY THEORY OF LIABILITY (INCLUDING ANY THEORY IN TORTS), ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES.

(c) Survival; Defense. The obligations in this Section 10.3 shall survive payment of all other Obligations pursuant to Section 12.8. At the election of any Indemnified Person, each Co-Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Person's reasonable discretion, at the sole cost and expense of Co-Borrowers; provided, that Co-Borrower's obligation to pay for such defense shall be limited to the reasonable and documented fees and disbursements of one external counsel on behalf of all Indemnified Persons. All amounts owing under this Section 10.3 shall be paid within thirty (30) days after written demand.

11. Notices. Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, by prepaid nationally recognized overnight courier, or by prepaid facsimile to Borrower Representative, to Collateral Agent or to Lenders, as the case may be, at their respective addresses set forth below:

Borrower Representative:	c/o PELTHOS THERAPEUTICS INC. 4020 Stirrup Creek Drive, Suite 110 Durham, NC 27703 Attention: John M. Gay Ph: [***] Email: [***]
If to Lenders or Collateral Agent:	Horizon Technology Finance Corporation 312 Farmington Avenue Farmington, CT 06032 Attention: Legal Department Ph: [***] Email: [***]

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

12. General Provisions.

12.1 Successors and Assigns. This Agreement and the Loan Documents shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, neither this Agreement nor any rights hereunder may be assigned by any Co-Borrower without Lenders' prior written consent, which consent may be granted or withheld in Lenders' sole discretion. Lenders shall have the right, without the consent of or notice to any Co-Borrower to sell, transfer, assign, negotiate, or grant participations in all or any part of, or any interest in Lenders' rights and benefits hereunder; provided, however, that unless a Specified Event of Default then exists, such assignee shall not be a Disqualified Institution without the prior written consent of the Borrower Representative in its sole discretion. Notwithstanding the foregoing, if a Specified Event of Default then exists, then no consent of or notice to any Co-Borrower shall be required including, without limitation, to an assignee that is a Disqualified Institution; provided, further, that if an Event of Default that is not a Specified Event of Default then exists, such assignee shall not be a Disqualified Institution without the prior written consent of the Borrower Representative in its sole discretion. Collateral Agent and Lenders may disclose the Loan Documents and any other financial or other information relating to any Co-Borrower to any potential participant or assignee of any of the Loans; provided that such participant or assignee agrees to be bound by provisions substantially similar to Section 14 herein and to protect the confidentiality of such documents and information using the same measures that it uses to protect its own confidential information.

12.2 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.3 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.4 Entire Agreement; Construction; Amendments and Waivers.

(a) Entire Agreement. This Agreement and each of the other Loan Documents, taken together, constitute and contain the entire agreement among each Co-Borrower, Collateral Agent and Lenders and supersede any and all prior agreements, negotiations, correspondence, understandings and communications between the parties, whether written or oral, respecting the subject matter hereof. Each Co-Borrower acknowledges that it is not relying on any representation or agreement made by Collateral Agent, Lenders or any employee, attorney or agent thereof, other than the specific agreements set forth in this Agreement and the Loan Documents.

(b) Construction. This Agreement is the result of negotiations between and has been reviewed by each Co-Borrower, Collateral Agent and Lenders as of the Effective Date and their respective counsel; accordingly, this Agreement shall be deemed to be the product of the parties hereto, and no ambiguity shall be construed in favor of or against any Co-Borrower, Collateral Agent or Lenders. Each Co-Borrower, Collateral Agent and Lenders agree that they intend the literal words of this Agreement and the other Loan Documents and that no parol evidence shall be necessary or appropriate to establish any Co-Borrower's, Collateral Agent's or Lenders' actual intentions.

(c) Amendments and Waivers. Any and all discharges or waivers of, or consents to any departures from any provision of this Agreement or of any of the other Loan Documents (excluding the Warrants, the provisions of which may be waived only in accordance with the terms thereof) shall not be effective unless the same is in writing and signed by Lenders and each Co-Borrower; provided that no such discharge, waiver or consent affecting the rights or duties of the Collateral Agent under this Agreement or any other Loan Document (excluding the Warrants, the provisions of which may be waived only in accordance with the terms thereof) shall be effective unless the same is in writing and signed by Collateral Agent and each Co-Borrower. No amendment or modification of this Agreement or of any of the other Loan Documents shall be effective unless the same is in writing and signed by Lenders and each Co-Borrower; provided that no such amendment or modification affecting the rights or duties of the Collateral Agent under this Agreement or any other Loan Document (excluding the Warrants, the provisions of which may be waived only in accordance with the terms thereof) shall be effective unless the same is in writing and signed by Collateral Agent. Any waiver or consent with respect to any provision of the Loan Documents shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Co-Borrower in any case shall entitle any Co-Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, waiver or consent effected in accordance with this Section 12.4 shall be binding upon Collateral Agent, Lenders and on each Co-Borrower.

12.5 Reliance by Lenders. All covenants, agreements, representations and warranties made herein by any Co-Borrower shall be deemed to be material to and to have been relied upon by Collateral Agent and Lenders, notwithstanding any investigation by Collateral Agent or Lenders.

12.6 No Set-Offs by Co-Borrowers. All sums payable by any Co-Borrower pursuant to this Agreement or any of the other Loan Documents shall be payable without notice or demand and shall be payable in United States Dollars without set-off or reduction of any manner whatsoever.

12.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (including signatures delivered by facsimile or other electronic means), each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations or commitment to fund remain outstanding. The obligations of each Co-Borrower to indemnify Collateral Agent and Lenders with respect to the expenses, damages, losses, costs and liabilities described in Section 10.3 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Collateral Agent or Lenders have run.

13. Relationship of Parties. Each Co-Borrower and Lenders acknowledge, understand and agree that the relationship between each Co-Borrower, on the one hand, and Lenders, on the other, is, and at all times shall remain solely that of a borrower and lender. Lenders shall not, under any circumstances, be construed to be a partner or a joint venturer of any Co-Borrower or any of their respective Affiliates; nor shall Lenders, under any circumstances, be deemed to be in a relationship of confidence or trust or a fiduciary relationship with any Co-Borrower or any of their respective Affiliates, or to owe any fiduciary duty or any other duty to any Co-Borrower or any of their respective Affiliates. Neither Collateral Agent nor any Lender undertakes or assumes any responsibility or duty to any Co-Borrower or any of their respective Affiliates to select, review, inspect, supervise, pass judgment upon or otherwise inform such Co-Borrower or any of its Affiliates of any matter in connection with its or their Property, any Collateral held by Collateral Agent or Lenders or the operations of any Co-Borrower or any of their respective Affiliates. Each Co-Borrower and each of its Affiliates shall rely entirely on their own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by Collateral Agent or Lenders in connection with such matters (including Lenders' review and approval of the Castle Creek Merger Agreement and the Mergers Funds Flow Memorandum) is solely for the protection of Collateral Agent and Lenders and no Co-Borrower nor any of their respective Affiliates is entitled to rely thereon.

14. Confidentiality. All information (other than periodic reports filed by Borrower Representative with the Securities and Exchange Commission) disclosed by any Co-Borrower to Collateral Agent or Lenders in writing or through inspection pursuant to this Agreement that is marked confidential shall be considered confidential. Collateral Agent and Lenders agree to use the same degree of care to safeguard and prevent disclosure of such confidential information as Collateral Agent and Lenders use with their own confidential information, but in any event no less than a reasonable degree of care. Neither Collateral Agent nor Lenders shall disclose such information to any third party (other than (a) to another party hereto, (b) to Collateral Agent's or Lenders' members, partners, attorneys, governmental regulators (including any self-regulatory authority) or auditors, (c) to Collateral Agent's or Lenders' subsidiaries and affiliates, (d) on a confidential basis, to any rating agency, (e) to prospective transferees and purchasers of the Loans or any actual or prospective party (or its Affiliates) to any swap, derivative or other transaction under which payments are to be made by reference to the Obligations, any Co-Borrower, any Loan Document or any payment thereunder, all subject to the same confidentiality obligation set forth herein or (f) as required by law, regulation, subpoena or other order to be disclosed) and shall use such information only for purposes of evaluation of their investment in Co-Borrowers and the exercise of Collateral Agent's or Lenders' rights and the enforcement of their remedies under this Agreement and the other Loan Documents. The obligations of confidentiality shall not apply to any information that (i) was known to the public prior to disclosure by the applicable Co-Borrower under this Agreement, (ii) becomes known to the public through no fault of Collateral Agent or Lenders, (iii) is disclosed to Collateral Agent or Lenders on a non-confidential basis by a third party or (iv) is independently developed by Collateral Agent or Lenders. Notwithstanding the foregoing, Collateral Agent's and Lenders' agreement of confidentiality shall not apply if Collateral Agent or Lenders have acquired indefeasible title to any Collateral or in connection with any enforcement or exercise of Collateral Agent's or Lenders' rights and remedies under this Agreement following an Event of Default, including the enforcement of Collateral Agent's and Lenders' security interest in the Collateral.

15. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH OF EACH CO-BORROWER, COLLATERAL AGENT AND LENDERS HEREBY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK. EACH OF EACH CO-BORROWER, COLLATERAL AGENT AND LENDERS HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

16. Cross-Guaranty of Co-Borrowers.

16.1 Cross-Guaranty. Each Co-Borrower hereby agrees that such Co-Borrower is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to Lenders and their successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations owed or hereafter owing to Lenders by each other Co-Borrower. Each Co-Borrower agrees that its guaranty obligation hereunder is a continuing guaranty of payment and performance and not of collection, that its obligations under this Section 16 shall not be discharged until payment and performance, in full, of the Obligations has occurred, and that its obligations under this Section 16 shall be absolute and unconditional, irrespective of, and unaffected by:

(a) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Agreement, any other Loan Document or any other agreement, document or instrument to which any Co-Borrower is or may become a party;

(b) the absence of any action to enforce this Agreement (including this Section 16) or any other Loan Document, or the waiver or consent by Lenders with respect to any of the provisions hereof or thereof;

(c) the existence, value or condition of, or failure to perfect its Lien against, any security for the Obligations or any action, or the absence of any action, by Lenders in respect thereof (including the release of any such security);

(d) the insolvency of any Co-Borrower or any other Person; or

(e) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

Each Co-Borrower shall be regarded, and shall be in the same position, as principal debtor with respect to the Obligations guaranteed hereunder.

16.2 Waivers by Co-Borrowers. Each Co-Borrower expressly waives all rights it may have now or in the future under any statute, at common law, at law, in equity or otherwise, to compel Lenders to marshal assets or to proceed in respect of the Obligations guaranteed hereunder against any other Co-Borrower, any other party or against any security for the payment and performance of the Obligations before proceeding against, or as a condition to proceeding against, such Co-Borrower. Each Co-Borrower and Lenders agree that the foregoing waivers are of the essence of the transaction contemplated by this Agreement and the other Loan Documents and that, but for the provisions of this Section 16 and such waivers, Lenders would decline to enter into this Agreement.

16.3 Benefit of Guaranty. Each Co-Borrower agrees that the provisions of this Section 16 are for the benefit of Lenders and their successors, transferees, endorsees and assigns, and nothing herein contained shall impair, as between any other Co-Borrower and Lenders, the obligations of such other Co-Borrower under the Loan Documents.

16.4 Waiver of Subrogation, Etc. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, and except as set forth in Section 16.7, each Co-Borrower hereby expressly and irrevocably waives any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor until the Obligations are indefeasibly paid in full in cash. Each Co-Borrower acknowledges and agrees that this waiver is intended to benefit Lenders and shall not limit or otherwise affect such Co-Borrower's liability hereunder or the enforceability of this Section 16, and that Lenders and their successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 16.

16.5 Election of Remedies. If Lenders may, under applicable law, proceed to realize their benefits under any of the Loan Documents giving Lenders a Lien upon any Collateral, whether owned by any Co-Borrower or by any other Person, either by judicial foreclosure or by non-judicial sale or enforcement, Lenders may, at their sole option, determine which of their remedies or rights they may pursue without affecting any of their rights and remedies under this Section 16. If, in the exercise of any of their rights and remedies, Lenders shall forfeit any of their rights or remedies (including, without limitation, their right to enter a deficiency judgment against any Co-Borrower or any other Person), whether because of any applicable laws pertaining to "election of remedies" or the like, each Co-Borrower hereby consents to such action by Lenders and waives any claim based upon such action, even if such action by Lenders shall result in a full or partial loss of any rights of subrogation that each Co-Borrower might otherwise have had but for such action by Lenders. Any election of remedies that results in the denial or impairment of the right of Lenders to seek a deficiency judgment against any Co-Borrower shall not impair any other Co-Borrower's obligation to pay the full amount of the Obligations. In the event Lenders shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or the Loan Documents, Lenders may bid all or less than the amount of the Obligations and the amount of such bid need not be paid by Lenders but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether a Lender or any other party is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 16, notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which Lenders might otherwise be entitled but for such bidding at any such sale.

16.6 Limitation. Notwithstanding any provision herein contained to the contrary, each Co-Borrower's liability under this Section 16 (which liability is in any event in addition to amounts for which such Co-Borrower is primarily liable under this Agreement) shall be limited to an amount not to exceed as of any date of determination the lesser of:

(a) the net amount of all Loans advanced to any other Co-Borrower under this Agreement and then re-loaned or otherwise transferred to, or for the benefit of, such Co-Borrower; and

(b) the amount that could be claimed by Lenders from such Co-Borrower under this Section 16 without rendering such claim voidable or avoidable under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law after taking into account, among other things, such Co-Borrower's right of contribution and indemnification from each other Co-Borrower under Section 16.7.

16.7 Contribution with Respect to Guaranty Obligations.

(a) To the extent that any Co-Borrower shall make a payment under this Section 16 of all or any of the Obligations (other than Loans made to such Co-Borrower for which it is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments then previously or concurrently made by any other Co-Borrower, exceeds the amount that such Co-Borrower would otherwise have paid if each Co-Borrower had paid the aggregate Obligations satisfied by such Guarantor Payment in the same proportion that such Co-Borrower's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each Co-Borrower as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Obligations and termination of the commitments to lend hereunder, such Co-Borrower shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Co-Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Co-Borrower shall be equal to the maximum amount of the claim that could then be recovered from such Co-Borrower under this Section 16 without rendering such claim voidable or avoidable under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(c) This Section 16.7 is intended only to define the relative rights of each Co-Borrower and nothing set forth in this Section 16.7 is intended to or shall impair the obligations of each Co-Borrower, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement. Nothing contained in this Section 16.7 shall limit the liability of any Co-Borrower to pay the Loans made directly or indirectly to such Co-Borrower and accrued interest, fees and expenses with respect thereto for which such Co-Borrower shall be primarily liable.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the applicable Co-Borrower to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Co-Borrower against other Co-Borrowers under this Section 16 shall be exercisable upon the full and indefeasible payment of the Obligations and the termination of the commitments to lend hereunder.

16.8 Liability Cumulative. The liability of each Co-Borrower under this Section 16 is in addition to and shall be cumulative with all liabilities of each Co-Borrower to the Lenders under this Agreement and the other Loan Documents to which such Co-Borrower is a party or in respect of any Obligations or obligation of the other Co-Borrowers, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

16.9 Borrowing Agency Provisions

(a) Each Co-Borrower hereby irrevocably designates Borrower Representative to be its attorney and agent and in such capacity to (i) borrow, (ii) request advances, (iii) sign and endorse notes, (iv) execute and deliver all instruments, documents, applications, security agreements and all other certificates, notices, writings and further assurances now or hereafter required hereunder and (v) otherwise take action under and in connection with this Agreement and the other Loan Documents, all on behalf of and in the name of such Co-Borrower, and hereby authorizes Lenders to pay over or credit all loan proceeds hereunder in accordance with the request of Borrower Representative (including in accordance with the Mergers Funds Flow Memorandum).

(b) The handling of this credit facility as a co-borrowing facility with a borrower representative in the manner set forth in this Agreement is solely as an accommodation to Co-Borrowers and at their request. Neither Lenders nor Collateral Agent shall incur liability to Co-Borrowers as a result thereof. To induce Lenders and Collateral Agent and in consideration thereof, each Co-Borrower hereby indemnifies Lenders and holds Collateral Agent and Lenders harmless from and against any and all liabilities, expenses, losses (other than, to the extent not constituting interest payable in respect of any amount, lost profits), damages and claims of damage or injury asserted against Lenders by any Person arising from or incurred by reason of the handling of the financing arrangements of Co-Borrowers as provided herein, reliance by Collateral Agent and Lenders on any request or instruction from Borrower Representative or any other action taken by Lenders or Collateral Agent with respect to this Section 16.9 except due to the gross negligence or willful misconduct of Lenders or Collateral Agent (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

17. Effect of Amendment and Restatement of the Original Loan Agreement.

On the Effective Date, upon the satisfaction of the conditions set forth in Sections 3.1 and 3.2, the Original Loan Agreement shall be amended and restated in its entirety by this Agreement. The parties hereto acknowledge and agree that (a) this Agreement and the other Loan Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation or termination of the "Obligations" as defined in and under the Original Loan Agreement as in effect prior to the Effective Date and which remain outstanding and are in all respects continuing (as amended and restated hereby); (b) the Liens and security interests as granted under the Original Loan Agreement and the other Loan Documents securing payment of such "Obligations" are in all respects continuing and in full force and effect after giving effect to this Agreement and the transactions contemplated hereby, and secure all Obligations hereunder (including the Amendment Loans); (c) references in the Loan Documents (including the Existing Notes, the Warrants, the Intercreditor Agreements and the Subordination Agreements) to the "Loan Agreement" or the "Venture Loan and Security Agreement" shall be deemed to be references to this Agreement, and to the extent necessary to effect the foregoing, each such Loan Document is hereby deemed amended accordingly; (d) all of the terms and provisions of the Original Loan Agreement shall continue to apply for the period prior to the Effective Date, including any determinations of payment dates, interest rates, Events of Default or any amount that may be payable to Lenders (or their assignees or replacements hereunder); and (e) the obligations under the Original Loan Agreement shall continue to be paid or prepaid on or prior to the Effective Date, and shall from and after the Effective Date continue to be owing and be subject to the terms of this Agreement. Co-Borrowers, Collateral Agent and Lenders acknowledge and agree that all principal, interest, fees, costs, reimbursable expenses and indemnification obligations accruing or arising under or in connection with the Original Loan Agreement which remain unpaid and outstanding as of the Effective Date shall be and remain outstanding and payable as an obligation under this Agreement and the other Loan Documents.

18. Consent; Limited Waiver.

18.1 Consent to Castle Creek Mergers. Subject to the terms and conditions of this Agreement (including the satisfaction of the conditions set forth in Sections 3.1 and 3.2 and compliance with Sections 6.14 and 7.6(e)), Collateral Agent and Lenders hereby consent to (a) the formation of each of Castle Creek Merger Sub and Castle Creek Merger Sub II, (b) the execution, delivery and performance by Borrower Representative, Castle Creek Merger Sub and Castle Creek Merger Sub II of the Castle Creek Merger Agreement and the consummation of the Castle Creek Mergers in accordance therewith, (c) the Castle Creek Bridge Closing Credit, and (d) the payment of the Castle Creek Closing Payments in accordance with the Mergers Funds Flow Memorandum.

18.2 Limited Nature. The consents set forth in Section 18.1 are limited to the specific matters set forth therein, shall be effective only in the specific instance and for the specific purpose for which given, and shall not (a) be deemed to be a consent to or waiver of any other transaction, or any amendment, modification or supplement to the Castle Creek Merger Agreement or the Castle Creek Bridge Notes not approved by Lenders, (b) constitute a course of dealing or otherwise obligate Lenders or Collateral Agent to grant any similar consent or waiver in the future, or (c) except as expressly set forth herein, limit or impair any right or remedy of Lenders or Collateral Agent under this Agreement or any other Loan Document.

19. Reaffirmation; Release.

19.1 Reaffirmation. Each Co-Borrower hereby (a) ratifies, confirms and reaffirms all of its obligations under the Loan Documents to which it is a party, as amended and restated hereby, (b) ratifies, confirms and reaffirms the grant of security interests and Liens in the Collateral made by it in favor of Collateral Agent and Lenders under the Original Loan Agreement and the other Loan Documents, and agrees that such security interests and Liens continue to secure all Obligations (including the Amendment Loans), and (c) agrees that each Loan Document to which it is a party remains in full force and effect and is hereby ratified and confirmed.

19.2 Release. In consideration of the agreements of Collateral Agent and Lenders contained herein, each Co-Borrower, on behalf of itself and its successors, assigns and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Lenders, Collateral Agent and their respective successors, assigns, affiliates, officers, directors, employees, agents and attorneys (collectively, the "Releasees") of and from any and all claims, demands, causes of action, suits, debts, liabilities and obligations of every name and nature, whether known or unknown, which any Co-Borrower may now or hereafter own, hold, have or claim to have against the Releasees, or any of them, for or by reason of any matter, cause or thing whatsoever arising from the beginning of the world to and including the Effective Date, in each case arising out of or relating to the Original Loan Agreement, this Agreement, the other Loan Documents or the transactions contemplated thereby.

[Remainder of page intentionally left blank, signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

CO-BORROWERS:

PELTHOS THERAPEUTICS INC.

By: _____
Name: _____
Title: _____

LNHC, INC.

By: _____
Name: _____
Title: _____

CHANNEL PHARMACEUTICAL CORPORATION

By: _____
Name: _____
Title: _____

CREDIT CARD MERGER SUB, INC.,

By: _____
Name: _____
Title: _____

CREDIT CARD MERGER SUB II, LLC,

By: _____
Name: _____
Title: _____

COLLATERAL AGENT AND LENDER:

HORIZON TECHNOLOGY FINANCE CORPORATION

By: _____
Name: Daniel R. Trolio
Title: Executive Vice President, Chief Financial Officer

THE OTHER LENDERS:

HORIZON FUNDING I, LLC

By: _____
Name: Daniel R. Trolio
Title: Executive Vice President, Chief Financial Officer

HORIZON FUNDING II, LLC

By: _____
Name: Daniel R. Trolio
Title: Executive Vice President, Chief Financial Officer

HORIZON CREDIT II LLC

By: _____
Name: Daniel R. Trolio
Title: Executive Vice President, Chief Financial Officer

LIST OF EXHIBITS AND SCHEDULES

Exhibit A	Disclosure Schedule
Exhibit B	Funding Certificate
Exhibit C	Form of Secured Promissory Note
Exhibit D	[Reserved]
Exhibit E	Form of Officer's Certificate
Exhibit F	Disqualified Institutions
Exhibit G	Competitors
Exhibit H	Castle Creek Merger Agreement
Exhibit I	Castle Creek Assets Intercreditor Agreement
Schedule 1	Mergers Funds Flow Memorandum

PELTHOS THERAPEUTICS INC.

FIRST AMENDMENT AND WAIVER TO
SENIOR SECURED CONVERTIBLE NOTES

This FIRST AMENDMENT AND WAIVER TO SENIOR SECURED CONVERTIBLE NOTES (this "**Amendment and Waiver**") is made as of October 30, 2026, by and among Pelthos Therapeutics Inc., a Nevada corporation (the "**Company**"), and the holder party hereto (the "**Consenting Holder**").

WHEREAS, the Company issued to the Consenting Holder and certain other investors (the "**Holders**") Senior Secured Convertible Notes, dated November 6, 2025 (the "**Notes**"), pursuant to the Securities Purchase Agreement, dated as of November 6, 2025, by and among the Company and the investors party thereto (the "**Securities Purchase Agreement–Notes**"). Certain capitalized terms used herein are defined in the Notes;

WHEREAS, pursuant to Section 15 of the Notes, the Notes may be amended, and any provision thereof may be waived, with the prior written consent of the holders of Notes representing at least sixty-five percent (65%) of the aggregate principal amount of the Notes then outstanding, and any amendment or waiver so approved shall be binding upon all existing and future holders of the Notes;

WHEREAS, concurrently herewith, the Company has also requested that certain other Holders (each, an "**Other Holder**", and collectively, the "**Other Holders**") enter into amendments and waivers in form and substance identical to this Amendment and Waiver (each, an "**Other Amendment and Waiver**", and together with this Amendment and Waiver, the "**Amendments and Waivers**").

WHEREAS, the Amendments and Waivers will become effective when the Holders representing at least sixty-five percent (65%) of the aggregate principal amount of the Notes then outstanding enter into an Other Amendment and Waiver;

WHEREAS, the Company proposes to enter into an Agreement and Plan of Merger (the "**Merger Agreement**"), with Castle Creek Biosciences, Inc. ("**Castle Creek**"), Credit Card Merger Sub, Inc., Credit Card Merger Sub II, LLC and Paragon Biosciences LLC, solely in its capacity as Securityholder Representative, pursuant to which, among other matters, the Company would acquire Castle Creek (the "**Merger**" and together with the related financing transactions and all other transactions contemplated thereby and the use of proceeds therefrom, the "**CCB Transactions**");

WHEREAS, concurrently with the execution of the Merger Agreement, the Company proposes to (i) enter into a Securities Purchase Agreement with the Consenting Holder and certain other investors, pursuant to which the Company would issue new Series B Convertible Preferred Stock and Warrants (as defined therein) and potentially new Series D Convertible Preferred Stock in connection with and immediately prior to, or concurrently with, the closing of the proposed acquisition of Castle Creek, and (ii) amend and restate its existing loan and security agreement with Horizon Technology Finance Corporation and certain of its affiliates (as so amended and restated, the "**Horizon Loan Agreement**");

WHEREAS, in connection with the CCB Transactions, the Company desires that the Consenting Holder waive: (i) the definition of "**Fundamental Transaction**", in part, such that the CCB Transactions shall not be deemed to be a "Fundamental Transaction" or a "**Change of Control**" (the "**Fundamental Transaction Waiver**"); (ii) any requirement to give notice or to redeem Notes pursuant to Section 5(b) of each Note to the CCB Transactions (the "**Change of Control Redemption Waiver**"); (iii) the conditions to affiliate transactions set forth in Section 12(m) of each Note solely with respect to the CCB Transactions (but including the participation of any Affiliate of the Company in any financing of the Company or Castle Creek in connection therewith) (the "**Affiliate Transactions Waiver**"); (iv) the definition of "**Permitted Indebtedness**" in Section 30(y) of each Note, in part, such that (A) the Company's obligations to make Milestone Payments (as defined in the Merger Agreement) and any other contingent consideration payable pursuant to the Merger Agreement and (B) Indebtedness of Castle Creek Biosciences, LLC and any successor to Castle Creek by Merger, to the extent not repaid upon the closing of the transactions contemplated by the Merger Agreement, shall each constitute Permitted Indebtedness (the "**Indebtedness Waiver**"); (v) the definition of "**Permitted Liens**" in Section 30(z) of each Note, in part, such that Liens incurred under the Pledge and Security Agreement and the Purchase and Sale Agreement, each dated as of February 24, 2025, by and among Castle Creek, Castle Creek Biosciences, LLC, and Ligand Pharmaceuticals Incorporated shall constitute Permitted Liens (the "**Liens Waiver**"); and (vi) the restrictions on transfers of assets in Section 12(f) of each Note, in part, to permit the CCB Transactions (the "**Restriction on Transfers of Assets Waiver**");

WHEREAS, the Company and the Consenting Holder desire to amend each Note and to waive certain provisions of each Note to permit the transactions contemplated by the Merger Agreement.

NOW, THEREFORE, in consideration of the execution and delivery of this Amendment and Waiver by the Consenting Holder and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto further agree as follows:

1. AMENDMENTS TO THE NOTES.

(a) The definition of "**Change of Control**" in Section 30(g) of each Note is hereby amended and restated in its entirety to read as follows:

"(g) "**Change of Control**" means (i) the Company effects any merger or consolidation of the Company with or into another Person, in which the Company is not the surviving entity or in which the shareholders of the Company immediately prior to such merger or consolidation do not own, directly or indirectly, at least 50% of the voting power of the surviving entity immediately after such merger or consolidation, (ii) the Company effects any sale to another Person of all or substantially all of its assets in one or a series of related transactions, (iii) pursuant to any tender offer or exchange offer (whether by the Company or another Person), holders of share capital tender shares representing more than 50% of the voting power of the share capital of the Company and the Company or such other Person, as applicable, accepts such tender for payment, or (iv) the Company consummates a share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the voting power of the share capital of the Company (except for any such transaction in which the shareholders of the Company immediately prior to such transaction maintain, in substantially the same proportions, the voting power of such Person immediately after the transaction."

(b) The definition of "**Permitted Senior Indebtedness**" in Section 30(aa) of each Note is hereby amended and restated in its entirety to read as follows:

"(aa) "**Permitted Senior Indebtedness**" means the principal of (and premium, if any), interest on, and all fees and other amounts (including, without limitation, any reasonable out-of-pocket costs, enforcement expenses (including reasonable and documented out-of-pocket legal fees and disbursements), collateral protection expenses and other reimbursement or indemnity obligations relating thereto) payable by the Company and/or its Subsidiaries under or in connection with (i) any credit facility to be entered into by the Company and/or its Subsidiaries with one or more financial institutions and on terms and conditions in form and substance reasonably satisfactory to the Required Holders; provided, however, that the aggregate outstanding amount of such Indebtedness permitted under such credit facility (taking into account the maximum amounts which may be advanced under the loan documents evidencing such credit facility) does not at any time exceed $80 million and/or (ii) any asset-based loan facility to be entered into by the Company and/or its Subsidiaries with one or more financial institutions; provided, however, that the aggregate outstanding amount of such Indebtedness permitted under such asset-based loan facility (taking into account the maximum amounts which may be advanced under the loan documents evidencing the asset-based loan facility) does not at any time exceed $10 million and provided further, that (y) such Indebtedness is secured solely by a lien on the accounts receivable, inventory and related proceeds of the Company and/or its Subsidiaries (and any customary related collateral) and (z) such lien is subject to any applicable intercreditor agreement or subordination agreement approved by the board of directors of the Company and the Required Holders."

(c) Section 3(c)(ii) of each Note is hereby amended and restated as follows:

"(ii) Company's Failure to Timely Convert. If the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, either (I) if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, to issue and deliver to the Holder (or its designee) a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, to credit the balance account of the Holder or the Holder's designee with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion of this Note (as the case may be) or (II) if the Registration Statement covering the resale of the shares of Common Stock that are the subject of the Conversion Notice (the "**Unavailable Conversion Shares**") is not available for the resale of such Unavailable Conversion Shares and the Company fails to promptly, but in no event later than as required pursuant to the Registration Rights Agreement (x) so notify the Holder and (y) deliver the shares of Common Stock electronically without any restrictive legend by crediting such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (II) is hereinafter referred to as a "**Notice Failure**" and together with the event described in clause (I) above, a "**Conversion Failure**"), then, in addition to all other remedies available to the Holder, (1) the Company shall pay in cash to the Holder on each day after such Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to 0.5% of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Deadline and to which the Holder is entitled, multiplied by (B) the average VWAP of the Common Stock selected by the Holder in writing as in effect at any time during the period beginning on the applicable Conversion Date and ending on the applicable Share Delivery Deadline and (2) the Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned (as the case may be) any portion of this Note that has not been converted pursuant to such Conversion Notice, provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline either (A) if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, the Company shall fail to issue and deliver to the Holder (or its designee) a certificate and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, the Transfer Agent shall fail to credit the balance account of the Holder or the Holder's designee with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (II) below or (B) a Notice Failure occurs, and if on or after such Share Delivery Deadline the Holder acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of shares of Common Stock issuable upon such conversion that the Holder is entitled to receive from the Company and has not received from the Company in connection with such Conversion Failure or Notice Failure, as applicable (a "**Buy-In**"), then, in addition to all other remedies available to the Holder, the Company shall, within two (2) Business Days after receipt of the Holder's request and in the Holder's discretion, either: (I) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions, stock loan costs and other reasonable and documented out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such shares of Common Stock) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate; provided that, in lieu of paying the Buy-In Price in cash, the Company may, at its option, promptly reissue (if surrendered) the principal amount of Notes equal to the principal amount of Notes submitted for conversion (in which case, such Conversion Notice shall be deemed rescinded and the Company's obligation to issue such Conversion Shares shall terminate and be cancelled) and pay the Buy-In Payment Amount (as defined below) in cash, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (II) (the "**Buy-In Payment Amount**"). Nothing shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the conversion of this Note as required pursuant to the terms hereof."

2. WAIVERS AND CONSENT.

(a) Effective as of the date the Amendments and Waivers have been executed by the Required Holders, the Consenting Holder hereby (a) grants the Fundamental Transaction Waiver, the Change of Control Redemption Waiver, the Affiliate Transactions Waiver, the Indebtedness Waiver, the Liens Waiver and the Restriction on Transfers of Assets Waiver, (b) waives any Event of Default, and any event that with notice or lapse of time would constitute an Event of Default, whether arising before or after the date hereof, arising from or in connection with the CCB Transactions, and (c) consents to the consummation of the CCB Transactions. The Consenting Holder agrees that the Horizon Loan Agreement is in form and substance reasonably satisfactory to the Required Holders for purposes of clause (i) of the definition of "Permitted Senior Indebtedness."

(b) Effective as of the date the Amendments and Waivers have been executed by the Required Holders, the application of Section 5(a) is permanently waived as to (i) any Fundamental Transaction consummated solely in cash, (ii) a strategic acquisition effected through a subsidiary of the Company and (iii) any transaction where there is no change to the securities, cash, assets or other property which each Holder (including the Consenting Holder) would be entitled to receive as a result of a Fundamental Transaction.

3. EFFECTIVENESS.

Section 1 and 2 of this Amendment shall become effective upon the execution and delivery by each Other Holders holding at least sixty-five percent (65%) of the aggregate principal amount of the Notes of the Other Amendment and Waiver of such Other Investor.

4. LIMITED EFFECT.

The Notes are not amended or waived in any other respect. All other terms and provisions of each Note not herein specifically modified, amended or waived shall remain in full force and effect as originally set forth therein, and the Company hereby ratifies and confirms all such terms and provisions as if such terms and provisions were restated herein in their entirety. All references to any Note in such Note, the Pledge Agreement or any related document or agreement (collectively, the "**Loan Documents**") shall be deemed a reference to such Note as modified and amended herein. The Company agrees that its obligations under each Note and each other Loan Document are its valid and binding obligations, enforceable in accordance with their terms. This Amendment and Waiver amends each Note, and is intended to be a continuation of the obligations set forth therein and in each other Loan Document. Nothing in this Amendment and Waiver is intended, nor shall be construed, to constitute a novation or an accord or satisfaction of any Note or any other Loan Document.

5. REAFFIRMATION.

The Company hereby (i) ratifies and confirms all of the liens, conveyances and grants contained in and created by the Pledge Agreement or any other Loan Document and/or otherwise securing any of the Secured Obligations (as defined in the Pledge Agreement); (ii) covenants and agrees that nothing contained in this Amendment and Waiver is intended to or shall impair the liens, conveyances or grants contained in and created by the Loan Documents or otherwise; and (iii) ratifies and confirms all of the terms and conditions of, and all obligations owing under the Loan Documents, the Loan Documents as modified hereby, and this Amendment and Waiver, and the indebtedness owing to the Holders under the foregoing, and all other obligations.

6. MISCELLANEOUS.

This Amendment and Waiver shall be governed by and construed under the internal laws of the State of New York, without giving effect to conflicts of laws principles. This Amendment and Waiver may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[*signature page follows*]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment and Waiver to Senior Secured Convertible Notes as of the date set out above.

COMPANY:

PELTHOS THERAPEUTICS INC.

By: /s/ Scott Plesha
Name: Scott Plesha
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have executed this Amendment and Waiver to Senior Secured Convertible Notes as of the date set out above.

CONSENTING HOLDER:

[·]

By: _____
Name:
Title:

Exhibit 10.8

SECOND AMENDMENT TO
EXECUTIVE EMPLOYMENT AGREEMENT

This Second Amendment to Executive Employment Agreement (this "Amendment") is entered into effective as of October 30, 2026 (the "Amendment Effective Date"), by and between Pelthos Therapeutics, Inc., a Nevada Corporation (the "Company"), and Scott Plesha (the "Executive"). Capitalized terms used but not otherwise defined in this Amendment shall have the respective meanings ascribed to such terms under the Employment Agreement (as hereinafter defined).

WHEREAS, the Company and Executive are parties to that certain Executive Employment Agreement dated as of July 1, 2025, as amended by the First Amendment to Executive Employment Agreement dated as of April 9, 2026 (collectively, the "Employment Agreement");

WHEREAS, the Company and Executive have agreed to amend certain provisions of the Employment Agreement as set forth herein; and

WHEREAS, acknowledging the provisions of Section 14 of the Employment Agreement, the Company and Executive desire to enter into this Amendment to formalize their agreement regarding changes to the Employment Agreement.

NOW, THEREFORE, in consideration of Executive's continued employment with the Company and the benefits and compensation paid in connection therewith, the promises and the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Amendment to Section 6(b) of the Employment Agreement. Effective as of the Amendment Effective Date, Section 6(b) of the Employment Agreement is amended by deleting the existing Section 6(b) and replacing it with a new Section 6(b) as follows:

"(b) Separation Benefits upon Certain Terminations not in Connection with a Change in Control. If the Company terminates Executive's employment without Cause pursuant to Section 5(b)(i), or if Executive resigns for Good Reason pursuant to Section 5(a)(ii), then conditioned upon Executive executing and not revoking a Release (as described below) following such termination, the Company will provide Executive with the following benefits (together, the "Separation Benefits"): (i) the Company will pay Executive an amount of severance equal to 18 months of Executive's then-current Base Salary; (ii) the vesting of all stock options and other equity awards will be accelerated by the number of months of severance described above, such that, as of the date of termination, the number of vested options and other equity awards shall be equal to that which would have vested had Executive remained employed through the severance period; (iii) a pro-rated Annual Bonus for the year in which Executive's termination occurs, equal to the Annual Bonus Executive would have earned that year had Executive's employment not been terminated (determined based on the actual achievement of the annual goals established by the Board in the applicable year, as determined by the Board at the time and in the manner set forth in Section 4(b) of this Agreement), multiplied by a fraction, the numerator of which is the number of days the Executive is employed by the Company during the applicable year prior to and including the date of termination and the denominator of which is 365 (the "Pro-Rata Bonus"); and (iv) if Executive is enrolled in the Company's group health plan immediately prior to termination and timely elects continued health insurance coverage pursuant to COBRA, the Company will pay to such plan or reimburse Executive (at the Company's election) an amount equal to the Company's share of the insurance premiums (which will be based on Executive's level of coverage immediately prior to termination), for the same period over which severance is paid or until Executive becomes eligible for group health insurance coverage under another employer's plan, whichever occurs first, provided however, that the Company will have the right to terminate such payment of COBRA premiums on behalf of Executive and instead pay Executive a lump sum amount equal to the COBRA premium times the number of months remaining in the specified period if the Company determines in its discretion that continued payment of the COBRA premiums is or may be discriminatory under Section 105(h) of the Internal Revenue Code. The Separation Benefits described in clause (i) above will be payable to Executive over time in accordance with the Company's payroll practices and procedures beginning on the 60th day following the termination of Executive's employment with the Company, provided that the first installment will include all amounts that would have been paid if such payments had commenced effective on the date of termination. The Separation Benefits described in clause (iii) above will be payable to Executive in accordance with the Company's regular bonus payment procedures, and in all events, will be paid no later than March 15 of the calendar year immediately following the calendar year in which Executive's termination occurs. For avoidance of doubt, the termination of Executive's employment as a result of Executive's death or Disability will not constitute a termination without Cause triggering the rights described herein. For purposes of this Agreement, "Change in Control" means a "change in control" as defined in the Pelthos Therapeutics Inc. 2023 Equity Incentive Plan (as may be amended from time to time), or any successor plan thereto; provided, however, that in no event shall the spinoff of Channel Pharmaceutical Corporation, a Nevada corporation, constitute a "Change in Control"."

2. Amendment to Section 6(c) of the Employment Agreement. Effective as of the Amendment Effective Date, Section 6(c) of the Employment Agreement is amended by deleting the existing Section 6(c) and replacing it with a new Section 6(c) as follows:

"(c) Separation Benefits upon Certain Terminations in Connection with a Change in Control. If the Company terminates Executive's employment without Cause pursuant to Section 5(b)(i), or if Executive resigns for Good Reason pursuant to Section 5(a)(ii), at the time of, or within six months of, a Change in Control (as defined below), then conditioned upon Executive executing and not revoking a Release (as described below), the Company will provide Executive with the following benefits (together, the "CIC Separation Benefits"): (i) the Company will pay Executive an amount of severance equal to 24 months of Executive's then-current Base Salary; (ii) the vesting of all stock options and other equity awards will be accelerated by the number of months of severance described above, such that, as of the date of termination, the number of vested options and other equity awards shall be equal to that which would have vested had Executive remained employed through the severance period; (iii) a Pro-Rata Bonus; and (iv) if Executive is enrolled in the Company's group health plan immediately prior to termination and timely elects continued health insurance coverage pursuant to COBRA, the Company will pay to such plan or reimburse Executive (at the Company's election) an amount equal to the Company's share of the insurance premiums (which will be based on Executive's level of coverage immediately prior to termination), for the same period over which severance is paid or until Executive becomes eligible for group health insurance coverage under another employer's plan, whichever occurs first, provided however, that the Company will have the right to terminate such payment of COBRA premiums on behalf of Executive and instead pay Executive a lump sum amount equal to the COBRA premium times the number of months remaining in the specified period if the Company determines in its discretion that continued payment of the COBRA premiums is or may be discriminatory under Section 105(h) of the Internal Revenue Code. The CIC Separation Benefits described in clause (i) above will be payable to Executive over time in accordance with the Company's payroll practices and procedures beginning on the 60th day following the termination of Executive's employment with the Company, provided that the first installment will include all amounts that would have been paid if such payments had commenced effective on the date of termination. The CIC Separation Benefits described in clause (iii) above will be payable to Executive in accordance with the Company's regular bonus payment procedures, and in all events, will be paid no later than March 15 of the calendar year immediately following the calendar year in which Executive's termination occurs. For avoidance of doubt, the termination of Executive's employment as a result of Executive's death or Disability will not constitute a termination without Cause triggering the rights described herein."

3. Amendment to Section 6(d) of the Employment Agreement. Effective as of the Amendment Effective Date, Section 6(d) of the Employment Agreement is amended by deleting the existing Section 6(d) and replacing it with a new Section 6(d) as follows:

(d) Release. The Company's obligation to provide the Separation Benefits or the CIC Separation Benefits, as applicable, is conditioned upon Executive: (i) executing and returning a release containing a comprehensive release of all claims against the Company, its affiliates, and their respective representatives (the "Release") within the time periods prescribed by the Release (but, in any event, no later than 60 days following the date of termination), which Release is not revoked within any time period allowed for revocation under applicable law; and (ii) continuing to comply with the terms of this Agreement (including any agreements specifically referenced herein). The Company will provide the Release to Executive within seven (7) days after the effective date of termination.

4. Effect on Remainder of Employment Agreement. Except as expressly set forth in this Amendment, the provisions of the Employment Agreement will remain in full force and effect, in their entirety, in accordance with their terms.

5. Miscellaneous. This Amendment will be governed, construed, and interpreted in accordance with the laws of the State of North Carolina, without giving effect to conflicts of laws principles. The parties agree that this Amendment may only be modified in a signed writing executed by both parties. This Amendment will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns. This Amendment may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Executive Employment Agreement effective as of the Amendment Effective Date.

EXECUTIVE:

/s/ Scott Plesha
Scott Plesha

COMPANY:

PELTHOS THERAPEUTICS, INC.

By: /s/ Matt Pauls
Name: Matt Pauls
Title: Chair of Compensation Committee Board of Directors

[Signature Page to Second Amendment to Executive Employment Agreement]

Exhibit 99.1

Pelthos Therapeutics to Combine with Castle Creek Biosciences, Creating Transformative Biotechnology Company Focused on Serious Diseases that Affect the Skin

Strategic Combination Brings Highly Innovative Late-Stage D-Fi Franchise Targeting Rare Diseases, with Orphan Drug-Designated Lead Indication in Dystrophic Epidermolysis Bullosa (DEB)

Combines Two Complementary Platforms Across Therapeutic Modalities: Castle Creek's Fibroblast-Based Cell and Gene Therapy Technology with Pelthos' Novel Platform

DURHAM, N.C. and EXTON, P.A., October 30, 2026 — Pelthos Therapeutics Inc. (NYSE American: PTHS) ("Pelthos" or the "Company"), a biopharmaceutical company committed to commercializing innovative therapeutic products for unmet patient needs, and Castle Creek Biosciences, Inc. ("Castle Creek"), a late-stage company developing redosable gene therapies, today announced they have entered into a definitive agreement under which Castle Creek will merge with Pelthos. The combination creates a transformative biotechnology company with novel technologies, including cell and gene therapy, targeting serious diseases that affect the skin. Castle Creek's late-stage fibroblast-based platform complements Pelthos' novel FDA-approved product portfolio and established commercial capabilities in dermatology. Upon close, the combined company will operate as Pelthos Therapeutics Inc. and continue to trade on the NYSE American (ticker symbol: "PTHS").

Castle Creek's lead candidate is D-Fi (dabocemagene autoficel; FCX-007), an injectable, redosable, gene-modified cell therapy with a continued Phase 3 study planned for the treatment of dystrophic epidermolysis bullosa (DEB), a devastating rare inherited disease caused by mutations in the COL7A1 gene. There is significant demand for new treatment options in DEB given the substantial burden of untreated wounds and increased risk of squamous cell carcinoma. D-Fi, which has received Orphan Drug Designation, is administered by intradermal injection every other month, and the drug product delivers type VII collagen (COL7) producing cells. In addition, Castle Creek is using its proprietary fibroblast technology to develop a topical formulation of D-Fi and to pursue additional therapeutic targets in serious diseases that affect the skin, including malignancies and inflammatory conditions.

"This transformative combination brings a novel platform with significant growth potential to Pelthos and broadens our focus beyond cutaneous infectious diseases to serious diseases that affect the skin," said Scott Plesha, CEO of Pelthos. "D-Fi builds on our established strength in dermatology, especially within pediatric dermatology, which we believe will accelerate its launch and value in the marketplace. This transaction creates a stronger, more diversified biotechnology company positioned to bring important new therapies to patients and drive long-term value for our shareholders."

"D-Fi has the potential to become a blockbuster franchise in DEB, where patients still have significant unmet needs," said Matt Gantz, Chairman and CEO of Castle Creek. "Joining with Pelthos will provide the commercial infrastructure to help realize the D-Fi opportunity and accelerate the pipeline of new indications from our platform."

Strategic Rationale

- **Compelling Complementary Capabilities:** As part of Pelthos' portfolio, D-Fi will leverage the Company's established commercial leadership, deep expertise in dermatology, and existing physician relationships to accelerate its commercial launch and delivery of important therapies to patients.

- **Greater Pipeline Diversification:** The combination brings together Pelthos' three novel FDA-approved products, ZELSUVMI®, XEPI® and XEGLYZE®, with D-Fi, creating a portfolio spanning marketed, launch-stage and late-stage assets across multiple therapeutic modalities. This broader mix provides multiple potential sources of growth over different time horizons.

- **Expanded Technology Base:** Castle Creek's fibroblast technology adds a cell and gene therapy capability to Pelthos' existing Nitricil platform, giving the combined company multiple therapeutic modalities to address serious diseases that affect the skin where conventional small molecules have had limited impact and expand the pipeline over time.

Transaction Terms

Under the terms of the agreement, Castle Creek stockholders will receive 5,200,000 shares of Pelthos common stock at the closing of the transaction, representing approximately 32.5% of Pelthos' fully diluted shares. As defined within the agreement, and subject to meeting various developmental and sales-based criteria, Castle Creek stockholders will also be eligible to receive: (i) up to 5,800,000 shares of Pelthos common stock upon FDA approval of D-Fi; (ii) up to a total of $300 million in milestone payments, payable in cash (or, to the extent required to preserve the intended tax treatment of the transaction, in a combination of cash and shares of Pelthos common stock), including a $50 million payment due upon achievement of specified Phase 3 clinical endpoints, and up to $250 million in additional consideration tied to D-Fi's first commercial sale and achievement of specified net sales milestones; and (iii) 80% of the net proceeds from the sale of any priority review voucher awarded upon FDA approval of D-Fi.

The transaction has been approved by the boards of directors of both companies and is expected to close by the end of the first quarter of 2027, subject to customary closing conditions including approval by Castle Creek's stockholders. Scott Plesha will continue to serve as Chief Executive Officer, and Peter Greenleaf will serve as Executive Chair of the combined company. Upon closing, the combined company's board will consist of 10 directors, including two designated by Castle Creek.

Advisors

Latham & Watkins LLP is serving as legal advisor to Pelthos. Oppenheimer & Co. Inc. provided a fairness opinion to Pelthos' board of directors. Bradley Arant Boult Cummings LLP and Katten Muchin Rosenman LLP are serving as legal advisors to Castle Creek and PHCP, LLC is serving as financial advisor to Castle Creek. Collected Strategies is serving as strategic communications advisor to Pelthos.

About D-Fi

D-Fi (dabocemagene autoficel; FCX-007) is an injectable autologous gene-modified cell therapy candidate for the treatment of DEB, a devastating, progressive, painful and debilitating rare genetic skin disorder. DEB is caused by a mutation in the COL7A1 gene, leading to a deficiency of normal type VII collagen (COL7) protein, impairing the connection between the epidermis and the dermis. D-Fi is composed of a patient's own dermal fibroblasts, which are genetically modified completely ex vivo with a self-inactivating (SIN) lentiviral vector (LV) containing the COL7A1 gene to express COL7. D-Fi is locally administered by intradermal injection into chronic wounds where the COL7 protein can support the formation of anchoring fibrils in the skin. In clinical studies, D-Fi has been generally well tolerated, with injection site reactions (skin discoloration, erythema, hemorrhage, pain, and swelling) being the most commonly reported adverse drug reactions. D-Fi has Orphan Drug Designation for the treatment of DEB and Rare Pediatric Disease, Fast Track, and Regenerative Medicine Advanced Therapy designations for the treatment of recessive DEB (RDEB) from the FDA.

About Castle Creek Biosciences, Inc.

Castle Creek Biosciences is a late-stage company developing re-dosable gene therapies. It is preparing to advance the Phase 3 program of its lead candidate, D-Fi (FCX-007), for patients with dystrophic epidermolysis bullosa (DEB). Learn more at castlecreekbio.com.

About Pelthos Therapeutics

Pelthos Therapeutics is a commercial-stage biopharmaceutical company focused on building and advancing a portfolio of differentiated cutaneous infectious disease products that address unmet patient needs. ZELSUVMI® (berdazimer) topical gel, 10.3%, the Company's lead product, is the first and only prescription therapy approved for use at home by patients, parents, and caregivers to treat molluscum contagiosum. The Company's portfolio of assets includes XEPI® (ozenoxacin) Cream, 1%, a topical treatment for impetigo, and XEGLYZE® (abametapir), a topical treatment for head lice. More information is available at www.pelthos.com. Follow Pelthos on LinkedIn and X.

Cautionary Note Regarding Forward-Looking Statements

This communication contains forward-looking statements (including within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 27A of the Securities Act of 1933, as amended (the "Securities Act")). These forward-looking statements include, but are not limited to, statements regarding the proposed transaction involving Pelthos and Castle Creek. Forward-looking statements generally include statements that are speculative in nature and depend upon or refer to future events or conditions, and include words such as "may," "will," "should," "would," "could," "might," "expect," "anticipate," "plan," "likely," "believe," "estimate," "project," "intend," "seek," "target," "potential," "predict," "forecast," "continue," and other similar expressions or the negative or plural of these words, or other similar expressions that are speculative or indicate future events or prospects. Statements that are not historical facts are forward-looking statements. Forward-looking statements include, but are not limited to, expectations regarding the proposed transaction; the potential benefits of the proposed transaction, including the sufficiency of the combined company's capital resources; the expected timing of the closing of the proposed transaction; statements regarding the potential achievement of, and expectations regarding, Castle Creek's and Pelthos's programs, including the potential achievement of any milestone; receipt of FDA approval of D-Fi, issuance of any contingent shares in connection with the proposed transaction or receipt of any priority review voucher; the continued listing of Pelthos on the NYSE American; and the anticipated benefits of the proposed transaction and the combined company's opportunities, strategy, and plans following the proposed transaction. Forward-looking statements are based on current beliefs and assumptions of management that are subject to risks and uncertainties and are not guarantees of future performance. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors, including, without limitation:

- the occurrence of any event, change or other circumstances that could give rise to the termination of the proposed transaction;
- the risk that Pelthos may be unable to obtain governmental and regulatory approvals and clearances required for the proposed transaction, or required governmental and regulatory approvals and clearances may delay the proposed transaction or result in the imposition of conditions that could cause the parties to abandon the proposed transaction;

- risks related to disruption of management time from ongoing business operations due to the proposed transaction;
- the risk that any announcements relating to the proposed transaction could have adverse effects on the market price of Pelthos's common stock;
- the risk of any unexpected costs or expenses resulting from the proposed transaction;
- the risk of any litigation relating to the proposed transaction;
- the risk that the proposed transaction and the related announcement could have an adverse effect on the ability of Pelthos and/or Castle Creek to retain and hire key personnel;
- the risk that problems may arise in successfully integrating the businesses of the companies, which may result in the combined company not operating as effectively and efficiently as expected;
- the risk that the combined company may be unable to achieve the anticipated benefits of the proposed transaction or it may take longer than expected to achieve those benefits and other important factors that could cause actual results to differ materially from those projected;
- the limited operating history of each company and their significant net losses incurred since inception;
- the need to raise additional capital to finance operations;
- uncertainties related to commercialization or market acceptance of FDA-approved products;
- the ability to advance product candidates through preclinical and clinical development;
- the ability to obtain regulatory approval for, and ultimately commercialize, the combined company's product candidates;
- the outcome of early clinical trials for product candidates, including the ability of those trials to satisfy relevant governmental or regulatory requirements;
- the ability of Pelthos, Castle Creek and the combined company to protect their respective intellectual property and proprietary technologies;
- reliance on third parties, contract manufacturers, and contract research organizations;
- the risk that the concurrent private financing is not consummated;
- the risk that the conditions to the closing of the proposed transaction are not satisfied in a timely manner or at all;
- product liability lawsuits, which could cause Pelthos to incur substantial liabilities and limit commercialization of any products that Pelthos may develop;
- current and future healthcare reform legislation or regulation, which may increase the difficulty and cost for Pelthos to commercialize products, may adversely affect the prices Pelthos may obtain and may have a negative impact on Pelthos' business and results of operations;
- delays or disruptions in the supply chain and manufacturing of Pelthos' products;
- the seasonal nature of Pelthos' business;
- the effects of inflation or trade tariffs; and
- market, economic and other conditions, Pelthos' current liquidity position, Pelthos' ability to continue as a going concern, to maintain the listing of Pelthos' common stock on the NYSE American, to manage costs and execute on its operational and budget plans, and to achieve its financial goals.

The foregoing review of important factors that could cause actual events to differ from expectations should not be construed as exhaustive and should be read in conjunction with statements that are included herein and elsewhere, including the risk factors included in Pelthos's most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K filed with the U.S. Securities and Exchange Commission (the "SEC"). In light of these risks, uncertainties and assumptions, the events described in the forward-looking statements might not occur or might occur to a different extent or at a different time than described. Pelthos and Castle Creek can give no assurance that the conditions to the proposed transaction will be satisfied. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. All subsequent written and oral forward-looking statements concerning the matters addressed herein and attributable to Pelthos, Castle Creek or any person acting on their behalf are expressly qualified in their entirety by the cautionary statements contained or referred to herein. Except as required by applicable law, Pelthos and Castle Creek undertake no obligation to revise or update any forward-looking statement, or to make any other forward-looking statements, whether as a result of new information, future events or otherwise.

NO OFFER OR SOLICITATION

This communication is not intended to be, and shall not constitute, an offer to buy or sell or the solicitation of an offer to buy or sell any securities, or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any jurisdiction. No offering of securities shall be made, except by means of a prospectus meeting the requirements of Section 10 of the Securities Act, or an exemption therefrom.

IMPORTANT ADDITIONAL INFORMATION AND WHERE TO FIND IT

In connection with the proposed transaction, Pelthos intends to file relevant materials with the SEC, including a registration statement on Form S-4 that will include an information statement and that will also constitute a prospectus of Pelthos. Pelthos may also file other relevant documents with the SEC regarding the proposed transaction. This communication is not a substitute for the information statement/prospectus, registration statement or any other document that Pelthos may file with the SEC. The definitive information statement/prospectus (when available) will be mailed to stockholders of Pelthos. INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE INFORMATION STATEMENT/PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS FILED OR THAT MAY BE FILED WITH THE SEC IN CONNECTION WITH THE PROPOSED TRANSACTION, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THOSE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT PELTHOS, CASTLE CREEK AND THE PROPOSED TRANSACTION.

Investors and stockholders will be able to obtain free copies of the information statement/prospectus and other documents filed by Pelthos with the SEC (when they become available) through the website maintained by the SEC at www.sec.gov. Copies of the information statement/prospectus (when available) and other documents filed with the SEC by Pelthos may be obtained free of charge on Pelthos's website at https://ir.pelthos.com/sec-filings/all-sec-filings or, alternatively, by contacting Pelthos at (919)-908-2400 or in writing at Pelthos, 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703. Investors and stockholders are urged to read the information statement/prospectus and the other relevant materials when they become available because they contain important information about the proposed transaction.

Contacts

Investors:

LifeSci Advisors, LLC
Mike Moyer, Managing Director
mmoyer@lifesciadvisors.com

Media:

Jude Gorman / Dylan O'Keefe
Collected Strategies
Pelthos-CS@collectedstrategies.com