

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): November 7, 2025 (November 6, 2025)

PELTHOS THERAPEUTICS INC.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction
of incorporation)

001-41964

(Commission File Number)

86-3335449

(IRS Employer
Identification No.)

4020 Stirrup Creek Drive, Suite 110
Durham, NC

(Address of registrant's principal executive office)

27703

(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):

- ☐ 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 ☒

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.

Convertible Note Financing (Private Placement)

On November 6, 2025, Pelthos Therapeutics Inc., a Nevada corporation (the “**Company**”), entered into a securities purchase agreement (the “**Securities Purchase Agreement**”) with certain investors, including Ligand Pharmaceuticals Incorporated, a Delaware corporation (“**Ligand**”) (collectively, the “**Investors**”), pursuant to which, among other things, on the Closing Date, the Investors purchased for cash, and the Company issued and sold to the Investors, senior secured convertible notes of the Company (the “**Convertible Notes**”) in the aggregate original principal amount of \$18.0 million, which are convertible into shares of the Company’s common stock, par value \$0.0001 per share (the “**Common Stock**”) (such transaction, the “**Convertible Note Financing**”). The gross proceeds from the Convertible Note Financing were approximately \$18.0 million, before paying estimated expenses. The Securities Purchase Agreement contained customary representations and warranties of the Company, on the one hand, and the Investors, on the other hand, and customary conditions to closing. The Securities Purchase Agreement generally prohibits the Company from issuing securities without the written consent of the Required Holders (as defined in the Securities Purchase Agreement), but includes exceptions for specific issuances of securities, including in connection with the independent funding and development of the Company’s historical assets relating to the sodium-ion channel known as NaV1.7 for the treatment of various types of systemic chronic pain, acute and chronic eye pain and post-surgical nerve blocks. The Investors have approved Ligand to serve as collateral agent (the “**Collateral Agent**”) under the Pledge Agreement and the other Security Documents (as defined in the Securities Purchase Agreement) and have authorized the Collateral Agent to take action on behalf of the Investors in accordance with the terms of the Securities Purchase Agreement and the Security Documents. The Convertible Note Financing was approved by the vote of the disinterested directors of the board of directors of the Company.

The Convertible Notes rank senior to current and future indebtedness of the Company and its subsidiaries, excluding (i) any credit facility with one or more financial institutions in form and substance reasonably satisfactory to the Required Holders and with an aggregate amount of indebtedness that does not exceed \$50.0 million or (ii) an asset-based loan facility that does not exceed \$10.0 million, subject to certain conditions (together, the “**Permitted Senior Indebtedness**”). The Convertible Notes accrue interest at a rate of 8.5% per annum (which increases to 18.0% in the event of a default) and mature on November 6, 2027 (the “**Maturity Date**”). The Convertible Notes are convertible by the holders thereof in whole or in part at any time after issuance and prior to the Maturity Date into shares of Common Stock based on a conversion price (the “**Conversion Price**”) of \$34.442 per share (the “**Conversion Shares**”), which cannot be reduced below \$34.442 per share without obtaining the approval of the shareholders of the Company (the “**Shareholder Approval**”), and is subject to customary adjustments for stock splits, stock dividends, recapitalization and other similar transactions. On the later of December 1, 2025 and the date the Company obtains the Shareholder Approval, if any, if the Conversion Price then in effect is greater than \$29.73, the Conversion Price shall automatically lower to \$29.73. In addition, on the maturity date of the Convertible Notes, if the Company’s Permitted Senior Indebtedness does not permit the Company to make the cash payment then due under the Convertible Notes, if the Conversion Price will automatically adjust to a price equal to the average volume weighted average price of the Common Stock for the five trading days ending immediately prior to the Maturity Date. The Company has agreed to seek Shareholder Approval either pursuant to a meeting of the shareholders or an information statement post-closing.

In general, a holder of a Convertible Note may not convert any portion of a Convertible Note if the holder, together with its affiliates, would beneficially own more than 49.9%, of Ligand, or 4.99% or 9.99%, in the case of the other Investors (the “**Maximum Percentage**”), of the number of shares of the Company’s Common Stock outstanding immediately after giving effect to such exercise; provided, however, that a holder may increase or decrease the Maximum Percentage by giving 61 days’ notice to the Company, but not to any percentage in excess of 9.99% (except for Ligand, whose Maximum Percentage already exceeds 9.99%).

As partial consideration for the Convertible Notes, the Company granted to each of the Investors (i) a 5.0% royalty on net sales of XepiTM (ozenoxacin) cream, for topical use, and all other derivatives and modifications thereof (“**Xepi**”), to be shared pro rata among all the Investors and (ii) the Company’s right to receive all royalty payments and milestone payments paid by Sato Pharmaceutical Co., Ltd (“**Sato**”) to Ligand in respect of net sales of ZELSUVMITM (less 50.0% of the milestone payment payable by Sato in respect of the first commercial sale of ZELSUVMITM in Japan, which will be kept by the Company), to be shared pro rata among all the Investors (the “**Sato Payments**”).

The Convertible Notes contain certain events of default provisions customary for a transaction of this type, including failure to timely issue the Conversion Shares, failure to maintain the listing of the Common Stock on an Eligible Market (as defined in the Convertible Notes) for a period of five (5) consecutive trading days, failure to maintain sufficient authorized shares for the issuance of Conversion Shares, a breach of any representation or warranty by the Company under the Securities Purchase Agreement and the Convertible Notes, the failure of any Security Document to create a separate valid and perfected first priority lien in favor of the Collateral Agent (subject to certain exceptions), and the occurrence of a Material Adverse Effect (as defined in the Securities Purchase Agreement), as well as certain customary events of default set forth in the Convertible Notes, including, among others, breach of covenants, including the incurrence of subsequent indebtedness or issuance of dividends, representations or warranties, insolvency, bankruptcy, liquidation and failure by the Company to pay the principal, interest late charges and other payments due under the Convertible Notes, in each case subject to certain cure periods, as applicable.

Upon an event of default, a holder has the option to require the Company to redeem a Convertible Note at a conversion price equal to the greater of (i) the Conversion Amount to be redeemed multiplied by (B) 115.0% (the “**Redemption Premium**”) and (ii) the product of (X) the Conversion Rate with respect to the Conversion Amount in effect at such time as the holder delivers to the Company a notice requiring the Company to redeem the Convertible Note upon an event of default (the “**Event of Default Redemption Notice**”) multiplied by (Y) the greatest closing price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such event of default and ending on the date the Company makes the entire payment therefor (the “**Event of Default Redemption Price**”). In the event of a Bankruptcy Event of Default (as defined in the Convertible Notes), the Company will immediately pay the holder an amount in cash representing (i) all outstanding principal, accrued and unpaid interest and accrued unpaid late charges on such principal and interest, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due under the Convertible Note, without the requirement for any notice or demand or other action by any person or entity.

No sooner than twenty trading days nor later than ten trading days prior to the consummation of a Change of Control (as defined in the Convertible Notes) (the “**Change of Control Date**”), but not prior to the public announcement of such Change of Control, the Company must deliver written notice of such Change of Control to the Holder (a “**Change of Control Notice**”). At any time during the period beginning after the Holder’s receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control (if a Change of Control Notice is not delivered) and ending twenty trading days after the later of (A) the date of consummation of such Change of Control, (B) the date of receipt of such Change of Control Notice or (C) the date of the announcement of such Change of Control, the holder may require the Company to redeem all or any portion of the Convertible Note by delivering written Notice thereof (the “**Change of Control Redemption Notice**”) to the Company. A Convertible Note may be redeemed by the Holder in cash at a price equal to the greatest of (i) the product of (w) 125% (the “**Change of Control Redemption Premium**”) multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient determined by dividing (I) the greatest closing price of the shares of Common Stock during the period beginning on the date immediately preceding the earlier to occur of (1) the consummation of the applicable Change of Control and (2) the public announcement of such Change of Control and ending on the date the Holder delivers the Change of Control Redemption Notice by (II) the Conversion Price then in effect, and (iii) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient of (I) the aggregate cash consideration and the aggregate cash value of any non-cash consideration per share of Common Stock to be paid to the holders of the shares of Common Stock upon consummation of such Change of Control, divided by (II) the Conversion Price then in effect (the “**Change of Control Redemption Price**”). At any time prior to the date on which such redemption payment is paid in full as a result of such Change of Control, the Convertible Notes may be converted in accordance with their terms.

In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, until such unpaid redemption price is paid, the Holder has the option to notify the Company that it promptly return all or any portion of the Convertible Note representing the Conversion Amount that was submitted for redemption. Upon the Company’s receipt of such notice, the Company will immediately return the Convertible Note (or issue a new convertible note), and the principal amount of the Convertible Note or such new convertible note will be increased by an amount equal to the difference between (1) the applicable Redemption Price minus (2) the principal portion of the Conversion Amount submitted for redemption.

The closing of the Convertible Note Financing occurred on November 6, 2025 (the “**Closing Date**”).

The foregoing descriptions of the Securities Purchase Agreement and the Convertible Notes are not complete and are subject to and qualified in their entirety by reference to the Securities Purchase Agreement and the Form of Convertible Notes, copies of which are filed as Exhibits 10.1 and 4.1, respectively, to this Current Report on Form 8-K and are incorporated by reference herein.

Pledge Agreement

On the Closing Date, the Company, as Pledgor and Ligand, as Secured Party, in its capacity as Collateral Agent for each holder of Convertible Notes, entered into a pledge agreement (the “**Pledge Agreement**”). In accordance with the terms of the Pledge Agreement, the Convertible Notes are secured by a lien on, and security interest in, (i) 10.0% of all aggregate net sales of the “End Product” as defined in the Ferrer License Agreement (as defined below), including Xepi, in the United States, including Puerto Rico and the U.S. Virgin Islands (the “**Territory**”); provided, however, that the Company will only accrue 5.0% of such payments as liabilities until the occurrence of an event of default (the “**Covered Product Revenue Payments**”), (ii) the Sato Payments, and (iii) all accounts receivable of the Company with respect to the Covered Product Revenue Payments and the Sato Payments, pursuant to a pledge agreement by and between – in each case, subject to certain permitted indebtedness of the Company.

The foregoing description of the Pledge Agreement is not complete and is subject to and qualified in its entirety by reference to the Pledge Agreement, a copy of which is filed as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated by reference herein.

Registration Rights Agreement

On the Closing Date, the Company and the Investors entered into a registration rights agreement (the “**Registration Rights Agreement**”), pursuant to which the Investors are entitled to certain resale registration rights with respect to shares of the Company’s Common Stock issuable upon conversion of the Convertible Notes issued to the Investors. Pursuant to the Registration Rights Agreement, the Company is required to prepare and file a resale registration statement with the SEC on or prior to the 60th calendar day following the Closing Date. The Company is obligated to use reasonable best efforts to cause this registration statement to be declared effective by the SEC by the earlier of (i) 90 calendar days following the Closing Date and (ii) the second business day after the date the Company is notified by the SEC that the registration statement will not be reviewed.

The Company will, among other things, indemnify the Investors, their directors, officers, shareholders, members, partners, employees, agents, advisors and representatives of the foregoing and each person who controls the Investors (a) under the registration statement, including from certain liabilities and fees and expenses (excluding underwriting discounts and selling commissions and all legal fees and expenses of legal counsel for any selling holder) and (b) under the Securities Purchase Agreement, including with respect to breaches of the Company’s representations, warranties, and covenants under the Securities Purchase Agreement.

The foregoing description of the Registration Rights Agreement is not complete and is subject to and qualified in its entirety by reference to the Registration Rights Agreement, a copy of which is filed as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated by reference herein.

Amended and Restated Lock-Up Agreement

As previously disclosed in the Company’s Current Report on Form 8-K filed on April 17, 2025, certain investors (the “**Lock-Up Investors**”) and Ligand entered into lock-up agreements (collectively, the “**Lock-Up Agreements**”), pursuant to which such parties 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, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or preferred stock, par value \$0.0001 per share, from July 1, 2025 until December 31, 2025, subject to certain exceptions set forth in each of the Lock-Up Agreements.

As an inducement to certain Investors to enter into the Securities Purchase Agreement, the Lock-Up Investors and Ligand, have, on the Closing Date, entered into amended and restated lock-up agreements (collectively, the “**Amended and Restated Lock-Up Agreements**”), pursuant to which the Lock-Up Investors and Ligand have received terms identical to those included in the Lock-Up Agreements signed by certain other investors who were parties to that certain securities purchase agreement, dated April 16, 2025, by and among the Company, LNHC, Inc., a Delaware corporation and wholly-owned subsidiary of the Company, and the others investors thereto (“**LNHC**”).

The foregoing description of the Amended and Restated Lock-Up Agreements is not complete and is subject to and qualified in its entirety by reference to the Form of Amended and Restated Lock-Up Agreement, a copy of which is filed as Exhibit 10.4 to this Current Report on Form 8-K and is incorporated by reference herein.

Channel Products Royalty Agreement Amendment

As previously disclosed in the Company's Current Report on Form 8-K filed on July 2, 2025, on July 1, 2025, the Company and Channel Pharmaceutical Corporation, a Nevada corporation and a wholly-owned subsidiary of the Company ("CPC"), as Sellers Parties, and Nomis RoyaltyVest LLC ("NRV"), Ligand, and Madison Royalty LLC, a Colorado limited liability company, on behalf of certain of the Company's management team and other assignees ("Madison"), collectively as Purchasers, entered into a Purchase and Sale Agreement (the "**Channel Products Royalty Agreement**"), pursuant to which the Company and Pharmaceutical Sub sold to each of NRV, Ligand, and Madison, and each of NRV, Ligand, and Madison purchased from the Company and Pharmaceutical Sub, all of the Company's and Pharmaceutical Sub's rights, title and interest in and to a portion of the Company's and Pharmaceutical Sub's revenue payments and all accounts related to or utilizing (i) Nitricil based technology, (ii) Xepi, or (iii) NaV channel based technology and, in each case, any improvements, successors, replacements or varying dosage forms of the foregoing, other than ZELSUVMI (the "**Channel Covered Products**").

As an inducement to certain Investors to enter into the Securities Purchase Agreement, on the Closing Date, CPC and the Company, as Seller, and NRV, Ligand, and Madison, as Purchasers, entered into Amendment No. 1 to Purchase and Sale Agreement (the "**Channel Products Royalty Agreement Amendment**"), pursuant to which the Company, NRV, Ligand and Madison amended the definition of the Channel Covered Products to exclude (i) Nitricil based technology and (ii) Xepi.

The foregoing description of the Channel Products Royalty Agreement Amendment is not complete and is subject to and qualified in their entirety by reference to the Channel Products Royalty Agreement Amendment, a copy of which is filed as Exhibit 10.5 to this Current Report on Form 8-K and is incorporated by reference herein.

Assignment Agreement Amendment

On March 24, 2025, Ligand and LNHC (prior to becoming a wholly-owned subsidiary of the Company) entered into an Assignment Agreement (the "**Assignment Agreement**"), pursuant to which LNHC assigned to Ligand, and Ligand accepted from LNHC all of LNHC's right, title and interest in and to the rights, properties and assets, either tangible or intangible, owned, used or held for use by LNHC.

As an inducement to certain Investors to enter into the Securities Purchase Agreement, on the Closing Date, LNHC and Ligand entered into Amendment No. 1 to Assignment Agreement (the "**Assignment Agreement Amendment**"), pursuant to which Ligand agreed to pay the Company (i) 75% of the milestone payment received by Ligand from Sato in respect of the first commercial sale of the "Licensed Product" (as defined in that certain Exclusive License and Sublicense Agreement between LNHC and Ligand, dated as of March 24, 2025 (the "**Sato License Agreement**") in Japan; and (b) fifty percent (50%) of any other amounts received by Ligand from Sato under the Sato License Agreement solely in respect of the "Licensed Product" (and, for the avoidance of doubt, no other product covered by the Sato License Agreement) in the "Licensed Field" (in each case, as defined in the Sato License Agreement), less any out-of-pocket costs incurred by Ligand to effectuate its rights, obligations and responsibilities under the Sato License Agreement.

The foregoing description of the Assignment Agreement Amendment is not complete and is subject to and qualified in their entirety by reference to the Assignment Agreement Amendment, a copy of which is filed as Exhibit 10.6 to this Current Report on Form 8-K and is incorporated by reference herein.

Xepi Transactions

Asset Purchase Agreement

On November 6, 2025, the Company entered into an Asset Purchase Agreement (the "**Asset Purchase Agreement**") with Biofrontera Inc., a Delaware corporation ("**Biofrontera**"), pursuant to which Biofrontera sold all of its right, title and interest in (i) Xepi, (ii) all of the assets of Biofrontera pertaining to the manufacture, sale and distribution of Xepi, (iii) all intellectual property of Biofrontera relating to Xepi, including, without limitation (A) certain patent and patent applications, including all specifically associated goodwill and (B) trademarks and trademark applications, including all specifically associated goodwill (iv) all preclinical data, records and reports relating to Xepi; (v) certain contracts related to Xepi; (vi) all of the licenses and agreements to which Seller is a party pertaining to the manufacture, sale and distribution of Xepi; and (vii) to the extent transferable in accordance with applicable laws, all regulatory filing related to Xepi (collectively, the "**Acquired Assets**"). The transactions contemplated by the Purchase Agreement were consummated on the Closing Date.

The aggregate purchase price payable by the Company to Biofrontera for the Acquired Assets will not exceed \$10.0 million and will consist of (i) a cash payment of \$3.0 million; (ii) a cash payment of \$1.0 million following the availability of certain commercial quantities of Xepi, subject to certain conditions; and (iii) contingent milestone payments.

The contingent milestone payments are payable upon the achievement of the following milestone events:

- (i) \$3.0 million after generating an initial achievement of Net Sales of Xepi (as defined in the Asset Purchase Agreement); and
- (ii) \$3.0 million after generating a secondary achievement of Net Sales of Xepi.

In connection with the acquisition of Xepi, the Company simultaneously entered into a standard third-party manufacturing services agreement in the ordinary course.

Ferrer License Agreement

On November 6, 2025, the Company entered into a License and API Supply Agreement (the “**Ferrer License Agreement**”) with Ferrer Internacional, S.A. (“**Ferrer**”) and Interquim, S.A.U. (“**Interquim**”). Pursuant to the Ferrer License Agreement, Ferrer will grant the Company an exclusive, sublicensable, royalty-bearing license to manufacture and commercialize Xepi in the Territory, as well as an exclusive, royalty-free sublicensable license to use Ferrer’s trademarks for the purpose of marketing, distributing, promoting and selling Xepi. Ferrer will supply analytical test methods and other testing know-how required to perform testing as required by applicable regulatory authorities.

Interquim will act as the supplier to the Company of Xepi in the Territory. Pursuant to the Ferrer License Agreement, the Company has agreed to order from Interquim certain minimum amounts of Xepi based on 24-month forecasts provided by the Company, of which the first eight months of such forecasts are considered binding. The Company is required to purchase 100% of its requirements for Xepi from Interquim at a specified price during the term of the Ferrer License and Supply.

The initial term of the Ferrer License Agreement is for an initial twelve-year period following the commercial launch of Xepi and is automatically renewed thereafter for successive one-year periods unless the Company provides notice of termination to Ferrer at least three months before the end of then-current term. The Ferrer License Agreement is otherwise terminated in accordance with the termination provisions provided therein.

The Ferrer License Agreement contains certain representations, warranties, limitations of liabilities, confidentiality and indemnity obligations and other provisions customary for an agreement of its type.

The foregoing descriptions of the Asset Purchase Agreement and the Ferrer License Agreement are not complete and are subject to and qualified in their entirety by reference to the Asset Purchase Agreement and the Ferrer License Agreement and the Asset Purchase Agreement, copies of which are filed as Exhibits 10.7 and 10.8, respectively, to this Current Report on Form 8-K and are incorporated by reference herein, with confidential portions redacted, as applicable.

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

The foregoing description of the material terms of the Securities Purchase Agreement and the Convertible Notes, and the transactions contemplated thereby, are qualified in its entirety by reference to the full text of Securities Purchase Agreement and the Convertible Notes, copies of which are filed as Exhibits 10.1 and 4.1, respectively, to this Current Report on Form 8-K and are incorporated by reference herein.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 above regarding the Convertible Notes issued to Investors and the conversions of the Convertible Notes into shares of the Company's Common Stock is incorporated into this Item 3.02 by reference. The Convertible Notes and the shares of Common Stock issuable upon conversion of the Convertible Notes were offered and sold in reliance on the exemption from the registration requirements provided by Section 4(a)(2) of the Securities Act as a transaction by an issuer not involving a public offering.

Item 8.01. Other Events.

On November 7, 2025, the Company issued a press release announcing the closing of the Convertible Note Financing and the Xepi Transactions. The press release contains statements intended as "forward-looking statements" which are subject to the cautionary statements about forward-looking statements set forth therein. 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

<u>4.1</u>	<u>Form of Senior Secured Convertible Note.</u>
<u>10.1*</u>	<u>Securities Purchase Agreement, dated as of November 6, 2025, by and among Pelthos Therapeutics Inc. and each of the investors thereto.</u>
<u>10.2</u>	<u>Pledge Agreement, dated as of November 6, 2025, by and among Pelthos Therapeutics Inc., as Pledgor, and Ligand Pharmaceuticals Incorporated, as Secured Party, in its capacity as Collateral Agent.</u>
<u>10.3*</u>	<u>Registration Rights Agreement, dated as of November 6, 2025, by and among Pelthos Therapeutics Inc. and each of the buyers thereto.</u>
<u>10.4</u>	<u>Form of Amended and Restated Lock-Up Agreement (Ligand and other investors).</u>
<u>10.5</u>	<u>Amendment No. 1 to Purchase and Sale Agreement, dated as of November 6, 2025, by and among Channel Pharmaceutical Corporation and Pelthos Therapeutics Inc., as the Seller Parties, and Nomis RoyaltyVest LLC, Ligand Pharmaceuticals Incorporated and Madison Royalty LLC, as Purchasers.</u>
<u>10.6</u>	<u>Amendment No. 1 to Assignment Agreement, dated as of November 6, 2025, by and between Ligand Pharmaceuticals Incorporated, as Assignee, and LNHC, Inc., as Assignor.</u>
<u>10.7*++</u>	<u>Asset Purchase Agreement, dated as of November 6, 2025, by and between Pelthos Therapeutics Inc., as Purchaser, and Biofrontera Inc., as Seller.</u>
<u>10.8*++</u>	<u>License and API Supply Agreement, effective as of November 6, 2025, by and among Pelthos Therapeutics Inc., Ferrer Internacional, S.A. and Interquim, S.A.U.</u>
<u>99.1</u>	<u>Press Release, dated November 7, 2025.</u>
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.

+ Indicates management contract or compensatory plan.

++ Certain information contained in this Exhibit has been excluded pursuant to Item 601(b)(10)(iv) of Regulation S-K because it is both not material and is the type of information that the Company treats as private or confidential.

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: November 7, 2025

Pelthos Therapeutics Inc.

By: /s/ Francis Knuettel II

Name: Francis Knuettel II

Title: Chief Financial Officer

[FORM OF SENIOR SECURED CONVERTIBLE NOTE]

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE 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 (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES. ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTIONS 3(c)(iii) AND 17(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THIS NOTE.

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”). PURSUANT TO TREASURY REGULATION §1.1275-3(b)(1), SCOTT M. PLESHA, A REPRESENTATIVE OF THE COMPANY HEREOF WILL, BEGINNING TEN DAYS AFTER THE ISSUANCE DATE OF THIS NOTE, PROMPTLY MAKE AVAILABLE TO THE HOLDER UPON REQUEST THE INFORMATION DESCRIBED IN TREASURY REGULATION §1.1275-3(b)(1)(i). SCOTT M. PLESHA MAY BE REACHED AT TELEPHONE NUMBER (919) 908-2400.

PELTHOS THERAPEUTICS INC.

SENIOR SECURED CONVERTIBLE NOTE

Issuance Date: November 6, 2025

Original Principal Amount: U.S. \$[●]

FOR VALUE RECEIVED, Pelthos Therapeutics Inc., a Nevada corporation (the “**Company**”), hereby promises to pay to the order of [BUYER] or its registered assigns (“**Holder**”) the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the “**Principal**”) when due, whether upon the Maturity Date, or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest (“**Interest**”) on any outstanding Principal at the applicable Interest Rate (as defined below) from the date set forth above as the Issuance Date (the “**Issuance Date**”) until the same becomes due and payable, whether upon the Maturity Date or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Secured Convertible Note (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement hereof, this “**Note**”) is one of an issue of Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement, dated as of November 6, 2025 (the “**Subscription Date**”), by and among the Company and the investors (the “**Buyers**”) referred to therein, as amended from time to time (collectively, the “**Notes**”, and such other Senior Secured Convertible Notes, the “**Other Notes**”). Certain capitalized terms used herein are defined in Section 30.

1. PAYMENTS OF PRINCIPAL. On the Maturity Date, the Company shall pay to the Holder an amount in cash representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 23(c)) on such Principal and Interest. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any.

2. INTEREST; INTEREST RATE.

(a) Interest on this Note shall commence accruing on the Issuance Date and shall be computed on the basis of a 360-day year and twelve 30-day months and shall be payable in arrears for on the first calendar day of each Fiscal Quarter (each, an “**Interest Date**”) with the first Interest Date being January 1, 2026. Interest shall capitalize on each Interest Date by adding the accrued Interest to the then outstanding Principal of this Note (“**Capitalized Interest**”); provided however, that the Company may, at its option following notice to the Holder, pay Interest on any Interest Date in cash (“**Cash Interest**”) or in a combination of Cash Interest and Capitalized Interest. The Company shall deliver a written notice (each, an “**Interest Election Notice**”) to each holder of the Notes on or prior to the fifth (5th) Trading Day immediately prior to such applicable Interest Date (each, an “**Interest Notice Due Date**” and the date such notice is delivered to all of the holder, each, an “**Interest Notice Date**”) which notice either (A) confirms that Interest to be paid on such Interest Date shall be added to the Principal of this Note as Capitalized Interest or (B) elects to pay Interest as Cash Interest or a combination of Cash Interest and Capitalized Interest and specifies the amount of Interest that shall be paid as Cash Interest and the amount of Interest, if any, that shall be capitalized as Capitalized Interest. If the Company elects to pay Interest, in whole or in part, as Cash Interest with respect to an Interest Date, the Company shall pay to the Holder, in cash by wire transfer of immediately available funds, the amount of any such Cash Interest on or prior to such Interest Date.

(b) Prior to the payment or capitalization of Interest on an Interest Date, Interest on this Note shall accrue at the Interest Rate and be payable by way of inclusion of the Interest in the Conversion Amount on each Conversion Date in accordance with Section 3(b)(i) or upon any redemption in accordance with Section 10 or any required payment upon any Bankruptcy Event of Default. From and after the occurrence and during the continuance of any Event of Default, the Interest Rate shall automatically be increased to eighteen percent (18.0%) per annum (the “**Default Rate**”). In the event that such Event of Default is subsequently cured (and no other Event of Default then exists, including, without limitation, for the Company’s failure to pay such Interest at the Default Rate on the applicable Interest Date), the adjustment referred to in the preceding sentence shall cease to be effective as of the calendar day immediately following the date of such cure; provided that the Interest as calculated and unpaid at such increased rate during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure of such Event of Default.

3. **CONVERSION OF NOTES.** At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) **Conversion Right.** Subject to the provisions of Section 3(d), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into validly issued, fully paid and non-assessable shares of Common Stock 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 Transfer Agent (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(b) **Conversion Rate.** The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the sum of (A) the portion of the Principal of this Note to be converted, redeemed or otherwise with respect to which this determination is being made, (B) accrued and unpaid Interest with respect to such Principal of this Note, (D) accrued and unpaid Late Charges with respect to such Principal of this Note and Interest, and (E) any other unpaid amounts pursuant to the Transaction Documents, if any.

(ii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, \$34.442, subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a “**Conversion Date**”), the Holder shall deliver (whether via electronic mail or otherwise), for receipt on or prior to 5:00 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (each, a “**Conversion Notice**”) to the Company. If required by Section 3(c)(iii), within one (1) Trading Day following a conversion of this Note as aforesaid, the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 17(b)). On the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment, in the form attached hereto as Exhibit II, of confirmation of receipt of such Conversion Notice and representation as to whether such shares of Common Stock may then be resold pursuant to Rule 144 or an effective and available registration statement (each, an “**Acknowledgement**”) to the 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 herein. On or before the first (1st) Trading Day following the date on which the Company has received a Conversion Notice (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 applicable Conversion Date of such shares of Common Stock issuable pursuant to such Conversion Notice) (the “**Share Delivery Deadline**”), the Company shall (1) provided that the Transfer Agent is participating in The Depository Trust Company’s (“**DTC**”) Fast Automated Securities Transfer Program (“**FAST**”) and such shares of Common Stock (i) (A) may then be sold by the Holder pursuant to an available and effective registration statement and (B) the 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**”), credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system or (2) if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion. If this Note is physically surrendered for conversion pursuant to Section 3(c)(iii) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than two (2) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 17(d)) representing the outstanding Principal not converted; provided, that, the failure of the Company to deliver such new Note to the Holder shall not prevent conversion of this Note in accordance herewith. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date; provided, that the Holder shall be deemed to have waived any voting rights of any such Common Stock, that may arise with respect to the period commencing on such Conversion Date, through and including such applicable Share Delivery Deadline (each, an “**Conversion Period**”), as necessary, such that the aggregate voting rights of any Common Stock beneficially owned by the Holder and/or any Attribution Parties, collectively, on any date of determination shall not exceed the Maximum Percentage (as defined below) as a result of any such conversion of this Note. Notwithstanding anything to the contrary contained in this Note or the Registration Rights Agreement, after the effective date of the Registration Statement (as defined in the Registration Rights Agreement) and prior to the Holder’s receipt of the notice of a Grace Period (as defined in the Registration Rights Agreement), the Company shall cause the Transfer Agent to deliver unlegended shares of Common Stock to the Holder (or its designee) in connection with any sale of Registrable Securities (as defined in the Registration Rights Agreement) with respect to which the 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, and for which the Holder has not yet settled.

(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, 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.

(iii) Registration; Book-Entry. The Company shall maintain a register (the “**Register**”) for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the “**Registered Notes**”). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part in accordance with the terms of this Note only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 17, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note 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 portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3(c)(i)) or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal, Interest and Late Charges 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 the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(iv) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3(d), shall convert from each holder of Notes electing to have Notes converted on such date a pro rata amount of such holder’s portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 22.

(d) Limitations on Conversions. The Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note pursuant to the terms and conditions of this Note 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, the Holder together with the other Attribution Parties collectively would beneficially own in excess of the percentage contemplated on such Holder's signature page to the 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 the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other 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 or convertible preferred stock or warrants) beneficially owned by the 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 the Holder and/or any other Attribution Party, as applicable. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the 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 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 notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3(d), to exceed the Maximum Percentage, the 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 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. 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 Note, by the 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 the Holder upon conversion of this Note results in the 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 the 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 the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% (or, if greater as of the Issuance Date, the Maximum Percentage as of the Issuance Date) as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the 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 this Note 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 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 a successor holder of this Note.

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an “**Event of Default**” and each of the events in clauses (ix), (x) and (xi) shall constitute a “**Bankruptcy Event of Default**”:

(i) the failure of the applicable Registration Statement (as defined in the Registration Rights Agreement) to be filed with the SEC on or prior to the date that is five (5) days after the applicable Filing Deadline (as defined in the Registration Rights Agreement) or the failure of the applicable Registration Statement to be declared effective by the SEC on or prior to the date that is five (5) days after the applicable Effectiveness Deadline (as defined in the Registration Rights Agreement);

(ii) while the applicable Registration Statement is required to be maintained effective pursuant to the terms of the Registration Rights Agreement, the effectiveness of the applicable Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or such Registration Statement (or the prospectus contained therein) is unavailable to any holder of Registrable Securities (as defined in the Registration Rights Agreement) for sale of all of such holder's Registrable Securities in accordance with the terms of the Registration Rights Agreement, and such lapse or unavailability continues for a period of five (5) consecutive days or for more than an aggregate of ten (10) days in any 365-day period (excluding days during an Allowable Grace Period (as defined in the Registration Rights Agreement));

(iii) the suspension (or threatened suspension) from trading or the failure (or threatened failure) of the Common Stock to be trading or listed (as applicable) on an Eligible Market for a period of five (5) consecutive Trading Days;

(iv) the Company's (A) failure to cure a Conversion Failure by delivery of the required number of shares of Common Stock within five (5) Trading Days after the applicable Conversion Date or exercise date (as the case may be) or (B) notice, written or oral, to any holder of the Notes, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Notes into shares of Common Stock that is requested in accordance with the provisions of the Notes, other than pursuant to Section 3(d);

(v) except to the extent the Company is in compliance with Section 9(b) below, at any time following the tenth (10th) consecutive day that the Holder's Authorized Share Allocation (as defined in Section 9(a) below) is less than the number of shares of Common Stock that the Holder would be entitled to receive upon a conversion of the full Conversion Amount of this Note (without regard to any limitations on conversion set forth in Section 3(d) or otherwise);

(vi) the Company's or any Subsidiary's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's or any Subsidiary's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least two (2) Trading Days;

(vii) the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holder upon conversion or exercise (as the case may be) of any Securities (as defined in the Securities Purchase Agreement) acquired by the Holder under the Securities Purchase Agreement (including this Note) as and when required by such Securities or the Securities Purchase Agreement, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) days;

(viii) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of \$500,000 of Indebtedness (as defined in the Securities Purchase Agreement) of the Company or any of its Subsidiaries, other than with respect to any Other Notes;

(ix) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within thirty (30) days of their initiation;

(x) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(xi) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

(xii) a final judgment or judgments for the payment of money aggregating in excess of \$1,000,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the \$1,000,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(xiii) the Company and/or any Subsidiary, individually or in the aggregate, either (i) fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness in excess of \$500,000 due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Company and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP) or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of \$500,000, which breach or violation permits the other party thereto to declare a default or otherwise accelerate amounts due thereunder, or (ii) suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Company or any Subsidiary, which default or event of default would or is likely to have a material adverse effect on the business, assets, operations (including results thereof), liabilities, properties, condition (including financial condition) or prospects of the Company or any of its Subsidiaries, individually or in the aggregate;

(xiv) other than as specifically set forth in another clause of this Section 4(a), the Company or any Subsidiary breaches any representation or warranty, in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of two (2) consecutive Trading Days;

(xv) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company as to whether any Event of Default has occurred;

(xvi) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 12 of this Note;

(xvii) any Material Adverse Effect (as defined in the Securities Purchase Agreement) occurs;

(xviii) any provision of any Transaction Document (including, without limitation, any Security Documents) shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document;

(xix) any Security Document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien (as defined in the Securities Purchase Agreement) on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent (as defined in the Securities Purchase Agreement) or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xx) any provision of Section 2 of the Securities Purchase Agreement shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xxi) any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty, which causes, for more than thirty (30) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of the Company or any Subsidiary, if any such event or circumstance could have a Material Adverse Effect (collectively, an “**Act of God**”); provided, however, that notwithstanding the foregoing, if the Company (and/or any applicable Subsidiary) continues to timely produce and deliver the Product (as defined in the Securities Purchase Agreement) at the same or greater quantities (and the same or better quality) without disruption from such Act of God (any such failure, an “**Act of God Failure**”) shall cause such Act of God not to constitute an Event of Default unless or until an Act of God Failure also occurs for such purpose hereunder; or

(xxii) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within one (1) Business Day deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an “**Event of Default Notice**”) to the Holder. At any time after the earlier of the Holder’s receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default (such earlier date, the “**Event of Default Right Commencement Date**”) and ending (such ending date, the “**Event of Default Right Expiration Date**”, and each such period, an “**Event of Default Redemption Right Period**”) on the twentieth (20th) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder’s receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of Default Right Expiration Date) all or any portion of this Note by delivering written notice thereof (the “**Event of Default Redemption Notice**”) to the Company, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate with respect to the Conversion Amount in effect at such time as the Holder delivers an Event of Default Redemption Notice multiplied by (Y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4(b) (the “**Event of Default Redemption Price**”). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 10. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 4, but subject to Section 3(d), until the Event of Default Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 4(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. In the event of the Company’s redemption of any portion of this Note under this Section 4(b), the Holder’s damages would be uncertain and difficult to estimate because of the parties’ inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder’s actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance satisfactory to the Holder and with such replacement Note approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having similar conversion rights as the Notes and having similar ranking and security to the Notes, and satisfactory to the Holder and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note 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 Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note 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 6 and 14, which shall continue to be receivable thereafter)) issuable upon the conversion or redemption of the Notes prior to such Fundamental Transaction, such shares of the publicly traded common stock (or their equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

(b) Notice of a Change of Control; Redemption Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the “**Change of Control Date**”), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via electronic mail and overnight courier to the Holder (a “**Change of Control Notice**”). At any time during the period beginning after the Holder’s receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence (as applicable) and ending on twenty (20) Trading Days after the later of (A) the date of consummation of such Change of Control or (B) the date of receipt of such Change of Control Notice or (C) the date of the announcement of such Change of Control, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof (“**Change of Control Redemption Notice**”) to the Company, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5 shall be redeemed by the Company in cash at a price equal to the greatest of (i) the product of (w) the Change of Control Redemption Premium multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient determined by dividing (I) the greatest Closing Sale Price of the shares of Common Stock during the period beginning on the date immediately preceding the earlier to occur of (1) the consummation of the applicable Change of Control and (2) the public announcement of such Change of Control and ending on the date the Holder delivers the Change of Control Redemption Notice by (II) the Conversion Price then in effect and (iii) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient of (I) the aggregate cash consideration and the aggregate cash value of any non-cash consideration per share of Common Stock to be paid to the holders of the shares of Common Stock upon consummation of such Change of Control (any such non-cash consideration constituting publicly-traded securities shall be valued at the highest of the Closing Sale Price of such securities as of the Trading Day immediately prior to the consummation of such Change of Control, the Closing Sale Price of such securities on the Trading Day immediately following the public announcement of such proposed Change of Control and the Closing Sale Price of such securities on the Trading Day immediately prior to the public announcement of such proposed Change of Control) divided by (II) the Conversion Price then in effect (the “**Change of Control Redemption Price**”). Redemptions required by this Section 5 shall be made in accordance with the provisions of Section 10 and shall have priority to payments to shareholders in connection with such Change of Control. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5, but subject to Section 3(d), until the Change of Control Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event of the Company’s redemption of any portion of this Note under this Section 5(b), the Holder’s damages would be uncertain and difficult to estimate because of the parties’ inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder’s actual loss of its investment opportunity and not as a penalty.

6. RIGHTS UPON ISSUANCE OF PURCHASE RIGHTS AND OTHER CORPORATE EVENTS.

(a) Purchase Rights. In addition to any adjustments pursuant to Sections 7 or 14 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 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 conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Conversion Price as of the applicable record date) 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, 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 the 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 the 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 the Holder until the earlier of (i) such time or times, if ever, 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 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 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 a conversion of this Note, at the Holder’s option (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as the Holder would have been entitled to receive had this Note initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 6 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Note.

7. RIGHTS UPON ISSUANCE OF OTHER SECURITIES.

(a) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 6 or Section 14, if the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, stock combination, 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 6 or Section 14, if the Company at any time on or after the Subscription Date combines (by any stock split, stock dividend, 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 7(a) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 7(a) 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 7 shall be made by rounding to the nearest cent with respect to cash or the nearest 1/1000th of a share with respect to Common Stock, as applicable, rounded upward. 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 during the term of this Note, with the prior written consent of the Required Holders (as defined in the Securities Purchase Agreement), reduce the then current Conversion Price of each of the Notes to any amount and for any period of time deemed appropriate by the board of directors of the Company.

(d) Adjustment at Stated Maturity. Subject to Section 7(e) below, in the event that the Permitted Senior Indebtedness does not permit the Company to make the payments contemplated by Section 1 hereof as of November 6, 2027 (the “**Stated Maturity Date**”), if the sum of (i) the VWAP of the Common Stock for each of the five (5) Trading Days ending, and including, the Trading Day immediately prior to the Stated Maturity Date, divided by (ii) five (5) (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations and similar events during such measuring period, the “**Adjustment Price**”) is less than the Conversion Price then in effect, on the Stated Maturity Date the Conversion Price shall automatically adjust to the Adjustment Price. In addition, if as of December 1, 2025 (the “**Initial Adjustment Date**”), the Conversion Price in effect is greater than \$29.73 (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations and similar event)(the “**Initial Adjustment Price**”), on the Initial Adjustment Date the Conversion Price shall automatically lower to the Initial Adjustment Price.

(e) Conversion Floor Price. Prior to the Shareholder Approval Date (as defined in the Securities Purchase Agreement), no adjustment pursuant to Sections 7(c) or 7(d) above shall cause the Conversion Price to be less than \$34.442 (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the date of the Securities Purchase Agreement) (the “**Conversion Floor Price**”). As of the Shareholder Approval Date, any events that would have resulted in an adjustment to the Conversion Price prior to the Shareholder Approval Date, but for the application of this Section 7(e), shall adjust the Conversion Price hereunder as if such events, as applicable, occurred on the Shareholder Approval Date.

8. 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, 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 Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion 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 nonassessable shares of Common Stock upon the conversion of this Note. Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Issuance Date, the Holder is not permitted to convert this Note in full for any reason (other than pursuant to restrictions set forth in Section 3(d) hereof), the Company shall use its reasonable best efforts to promptly remedy such failure, including, without limitation, obtaining such consents or approvals as necessary to permit such conversion into shares of Common Stock.

9. RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. So long as any Notes 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 Notes then outstanding (without regard to any limitations on conversions and assuming such Notes remain outstanding until the Maturity Date) at the Conversion Price then in effect (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 of the Notes based on the original principal amount of the Notes held by each holder on the Closing 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 Notes, 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 Notes shall be allocated to the remaining holders of Notes, pro rata based on the principal amount of the Notes then held by such holders.

(b) Insufficient Authorized Shares. If, notwithstanding Section 9(a), and not in limitation thereof, at any time while any of the Notes 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 Notes 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 Notes 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 ninety (90) days after the occurrence of such Authorized Share Failure, 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. 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 the Company is prohibited from issuing shares of Common Stock pursuant to the terms of this Note 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**”), in lieu of delivering such Authorized Failure Shares to the Holder, the Company shall pay cash in exchange for the redemption of such portion of the Conversion Amount 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 greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Conversion Notice with respect to such Authorized Failure Shares to the Company and ending on the date of such issuance and payment under this Section 9(a); and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorized Failure Shares, any brokerage commissions and other reasonable and documented out-of-pocket expenses, if any, of the Holder incurred in connection therewith. Nothing contained in Section 9(a) or this Section 9(b) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

10. REDEMPTIONS.

(a) Mechanics. The Company shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company’s receipt of the Holder’s Event of Default Redemption Notice. If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5(b), the Company shall deliver the applicable Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within five (5) Business Days after the Company’s receipt of such notice otherwise. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full or conversion in accordance herewith, shall satisfy the Company’s payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Conversion Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company’s receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Conversion Amount, and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 17(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 10, if applicable) minus (2) the Principal portion of the Conversion Amount submitted for redemption. The Holder’s delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company’s obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 4(b) or Section 5(b) (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than two (2) Business Days of its receipt thereof, forward to the Holder by facsimile or electronic mail a copy of such notice. If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

11. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law (including, without limitation, Chapter 78 of the Nevada Revised Statute) and as expressly provided in this Note.

12. COVENANTS. Until all of the Notes have been converted, redeemed or otherwise satisfied in accordance with their terms:

(a) Rank. All payments due under this Note (a) shall rank *pari passu* with all Other Notes and (b) shall be senior to all other Indebtedness of the Company and its Subsidiaries (other than Permitted Indebtedness secured by Permitted Liens).

(b) Incurrence of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than (i) the Indebtedness evidenced by this Note and the Other Notes and (ii) other Permitted Indebtedness), without the prior written consent of the Required Holders.

(c) Existence of Liens. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, "**Liens**") other than Permitted Liens.

(d) Restricted Payments and Investments. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other than Permitted Indebtedness secured by Permitted Liens) whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness or make any Investment, as applicable, if at the time such payment with respect to such Indebtedness and/or Investment, as applicable, is due or is otherwise made or, after giving effect to such payment, (i) an event constituting an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

(e) Restriction on Redemption and Cash Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or distribution on any of its capital stock, except as such dividend or distribution related to the CPC Transactions (as defined in the Securities Purchase Agreement).

(f) Restriction on Transfer of Assets. Except for the CPC Transactions, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business consistent with its past practice and (ii) sales of inventory and product in the ordinary course of business.

(g) Maturity of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, permit any Indebtedness (other than Permitted Indebtedness secured by Permitted Liens) of the Company or any of its Subsidiaries to mature or accelerate prior to the Maturity Date.

(h) Change in Nature of Business. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially and materially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the Subscription Date. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, modify its or their corporate purpose.

(i) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

(j) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder.

(k) Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take all action necessary or advisable to maintain all of the Intellectual Property Rights (as defined in the Securities Purchase Agreement) of the Company and/or any of its Subsidiaries that are necessary or material to the conduct of its business in full force and effect.

(l) Maintenance of Insurance. The Company shall maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated.

(m) Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate, except transactions in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof.

(n) Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities that would cause a breach or default under the Notes.

(o) Stay, Extension and Usury Laws. To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Note; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(p) Taxes. The Company and its Subsidiaries shall pay when due all taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to file would not, individually or in the aggregate, have a material effect on the Company or any of its Subsidiaries). Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(q) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the “**Independent Investigator**”). If the Independent Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note of such breach. In connection with such investigation, the Independent Investigator may, during normal business hours, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its legal advisors and accountants (including the accountants’ work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company’s officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

13. SECURITY. This Note and the Other Notes are secured to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Documents).

14. DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Sections 6(a) or 7, 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) (the “**Distributions**”), then the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note 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 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 the 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 the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, 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).

15. AMENDING THE TERMS OF THIS NOTE. Except for Section 3(d) and this Section 15, which may not be amended, modified or waived by the parties hereto, the prior written consent of the holders of Notes representing at least sixty-five (65%) of the aggregate principal amount of the Notes then outstanding shall be required for any amendment, modification or waiver to this Note. Any amendment, modification or waiver so approved shall be binding upon all existing and future holders of this Note and any Other Notes; provided, however, that no such change, waiver or, as applied to any of the Notes held by any particular holder of Notes, shall, without the written consent of that particular holder, (i) reduce the amount of Principal, reduce the amount of accrued and unpaid Interest, change the ranking, reduce or extend the Maturity Date, of the Notes, (ii) disproportionately and adversely affect any rights under the Notes of any holder of Notes; or (iii) modify any of the provisions of, or impair the right of any holder of Notes under, this Section 15.

16. TRANSFER. This Note and any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 2(g) of the Securities Purchase Agreement.

17. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 17(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 17(d)) to the Holder representing the outstanding Principal not being transferred. No legal opinion shall be required for transfers to Affiliates of the Holder or to another Holder or its Affiliates, provided that the transferee agrees in writing to be bound by the terms of this Note and the related agreements, and the Holder provides customary representations regarding the status of the transferee as an Affiliate. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3(c)(iii) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (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 Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 17(d) and in principal amounts of at least \$1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 17(a) or Section 17(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

18. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note 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 the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. No failure on the part of the 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 the 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 the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. 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, conversion 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 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 Note (including, without limitation, compliance with Section 7).

19. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note 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 Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, 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, attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

20. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. 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 Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, 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 the Holder.

21. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the 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 21 shall permit any waiver of any provision of Section 3(d).

22. DISPUTE RESOLUTION.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, a 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 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 Closing Bid Price, such Closing Sale Price, 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 (2nd) 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 select with the Company's approval (such approval not to be unreasonably or untimely delayed) 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 22 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 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 reasonable and documented 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 22 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) 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 22, (ii) the terms of this Note 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 Note 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 22 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 22 and (iv) nothing in this Section 22 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 22).

23. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, 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 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 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.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars (“**U.S. Dollars**”), and all amounts owing under this Note 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 Note, 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 Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note 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. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

24. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

25. 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 Note and the Securities Purchase Agreement.

26. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note 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. Except as otherwise required by Section 22 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in 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. 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 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 the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the 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 the Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 22. **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 NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

27. 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 27 referred to as the “**Judgment Currency**”) an amount due in U.S. dollars under this Note, 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 27(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 27(a)(ii) 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 Note.

28. SEVERABILITY. If any provision of this Note 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 Note so long as this Note 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).

29. MAXIMUM PAYMENTS. Without limiting Section 9(d) of the 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 Holder and thus refunded to the Company.

30. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

- (a) “**1933 Act**” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.
- (b) “**1934 Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.
- (c) “**Affiliate**” 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.
- (d) “**Attribution Parties**” means, 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 Issuance Date, directly or indirectly managed or advised by the Holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the 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 the Holder’s and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.
- (e) “**Bloomberg**” means Bloomberg, L.P.
- (f) “**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) **“Change of Control”** means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly-owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the shares of Common Stock in which holders of the Company’s voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

(h) **“Change of Control Redemption Premium”** means 125%.

(i) **“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 Market, as reported by Bloomberg, or, if the Principal 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 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal 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 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 22. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

(j) **“Closing Date”** shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued Notes pursuant to the terms of the Securities Purchase Agreement.

(k) **“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.

(l) **“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.

(m) **“Eligible Market”** means The New York Stock Exchange, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Select Market, the Nasdaq Global Market or the Principal Market.

(n) **“Fiscal Quarter”** means each of the fiscal quarters that ends on March 31, June 30 or September 30.

(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 Note 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) **“GAAP”** means United States generally accepted accounting principles, consistently applied.

(q) **“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.

(r) **“Indebtedness”** shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(s) **“Interest Date”** means, with respect to any given calendar month, the first Trading Day of such calendar month.

(t) **“Interest Rate”** means eight and a half percent (8.5%) per annum, as may be adjusted from time to time in accordance with Section 2.

(u) **“Investment”** means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person or the purchase of any assets of another Person for greater than the fair market value of such assets.

(v) **“Maturity Date”** shall mean November 6, 2027; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that the Permitted Senior Indebtedness does not permit the Company to make the cash payments contemplated by Section 1 hereof upon such original Maturity Date, through the date that is ninety (90) days following the maturity date of the Permitted Senior Indebtedness, (ii) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default, or (iii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date, provided further that if a Holder elects to convert some or all of this Note pursuant to Section 3 hereof, and the Conversion Amount would be limited pursuant to Section 3(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of this Note.

(w) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(x) “**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.

(y) “**Permitted Indebtedness**” means (i) Indebtedness evidenced by this Note and the Other Notes, (ii) Indebtedness set forth on Schedule 4(s) to the Securities Purchase Agreement, as in effect as of the Subscription Date, (iii) Indebtedness secured by Permitted Liens or unsecured but as described in clauses (iv) and (v) of the definition of Permitted Liens and (iv) the Permitted Senior Indebtedness.

(z) “**Permitted Liens**” means (i) any Lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any Lien created by operation of law, such as materialmen’s liens, mechanics’ liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens (A) upon or in any equipment acquired or held by the Company or any of its Subsidiaries to secure the purchase price of such equipment or Indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, or (B) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment, in either case, with respect to Indebtedness in an aggregate amount not to exceed \$0, (v) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clause (iv) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase, (vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods, and (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 4(a)(xii) and (viii) Liens with respect to the Permitted Senior Indebtedness.

(aa) **“Permitted Senior Indebtedness”** 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 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 \$50 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.

(bb) **“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.

(cc) **“Pledge Agreement”** shall have the meaning as set forth in the Securities Purchase Agreement.

(dd) **“Principal Market”** means the NYSE American.

(ee) **“Redemption Notices”** means, collectively, the Event of Default Redemption Notices, and the Change of Control Redemption Notices, and each of the foregoing, individually, a **“Redemption Notice.”**

(ff) **“Redemption Premium”** means 115%.

(gg) **“Redemption Prices”** means, collectively, Event of Default Redemption Prices, the Change of Control Redemption Prices, and, and each of the foregoing, individually, a **“Redemption Price.”**

(hh) **“Registration Rights Agreement”** means that certain registration rights agreement, dated as of the Closing Date, by and among the Company and the initial holders of the Notes relating to, among other things, the registration of the resale of the Common Stock issuable upon conversion of the Notes or otherwise pursuant to the terms of the Notes, as may be amended from time to time.

- (ii) “**SEC**” means the United States Securities and Exchange Commission or the successor thereto.
- (jj) “**Security Documents**” shall have the meaning as set forth in the Securities Purchase Agreement.
- (kk) “**Securities Purchase Agreement**” means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the initial holders of the Notes pursuant to which the Company issued the Notes, as may be amended from time to time.
- (ll) “**Subscription Date**” means November 6, 2025.
- (mm) “**Subsidiaries**” shall have the meaning as set forth in the Securities Purchase Agreement.
- (nn) “**Subject Entity**” means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.
- (oo) “**Successor Entity**” means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.
- (pp) “**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 4:00:00 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 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.

(qq) “**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 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 22. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

31. **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 Note, 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 31 shall limit any obligations of the Company, or any rights of the Holder, under Section 5(i) of the Securities Purchase Agreement.

32. **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.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

PELTOS THERAPEUTICS INC.

By: _____
Name:
Title:

Senior Secured Convertible Note - Signature Page

EXHIBIT I

**PELTHOS THERAPEUTICS INC.
CONVERSION NOTICE**

Reference is made to the Senior Secured Convertible Note (the “**Note**”) issued to the undersigned by Pelthos Therapeutics Inc., a Nevada corporation (the “**Company**”). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Stock, \$0.0001 par value per share (the “**Common Stock**”), of the Company, as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted: _____

Aggregate accrued and unpaid Interest and
accrued and unpaid Late Charges with
respect to such portion of the Aggregate
Principal and such Aggregate Interest 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: _____

Please issue the Common Stock into which the Note is 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 Holder either (i) pursuant to Rule 144 (subject to the Holder's execution and delivery to the Company of a customary 144 representation letter) 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: _____

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the “**Agreement**”), dated as November 6, 2025, 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 each of the investors listed on the Schedule of Buyers attached hereto (individually, a “**Buyer**” and collectively, the “**Buyers**”).

RECITALS

A. The Company and each Buyer is 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.

B. The Company has authorized a new series of senior secured convertible notes of the Company, in the aggregate original principal amount of \$18,000,000, substantially in the form attached hereto as **Exhibit A** (the “**Notes**”), which Notes shall be convertible into shares of Common Stock (as defined below) (the shares of Common Stock issuable pursuant to the terms of the Notes, including, without limitation, upon conversion or otherwise, collectively, the “**Conversion Shares**”), in accordance with the terms of the Notes.

C. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, a Note in the aggregate original principal amount set forth opposite such Buyer’s name in column (3) on the Schedule of Buyers.

D. At the Closing, the parties hereto shall execute and deliver a Registration Rights Agreement, in the form attached hereto as **Exhibit B** (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.

E. The Notes and the Conversion Shares are collectively referred to herein as the “**Securities**.”

F. The Notes will rank senior to all current and future indebtedness of the Company, and its Subsidiaries (as defined below), other than Permitted Senior Indebtedness (as defined in the Notes) secured by Permitted Liens (as defined in the Notes), and the Notes will be secured by a first priority perfected security interest in the Collateral (as defined in the Notes), as evidenced by (i) a pledge agreement in the form attached hereto as **Exhibit C** (the “**Pledge Agreement**”) and (ii) the terms and conditions of Section 2 hereof (the “**Royalty**”, and together with the Pledge Agreement, and the other security documents and agreements entered into in connection with this Agreement and each of such other documents and agreements, as each may be amended or modified from time to time, collectively, the “**Security Documents**”).

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 NOTES.

(a) Purchase of Notes. 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) a Note in the original principal amount as is set forth opposite such Buyer's name in column (3) on the Schedule of Buyers.

(b) Closing. The closing (the "**Closing**") of the purchase of the Notes by the Buyers shall occur at the offices of Kelley Drye & Warren LLP, 3 World Trade Center, 175 Greenwich Street, New York, NY 10007. The date and time of the Closing (the "**Closing Date**") shall be 10:00 a.m., New York time, on the first (1st) Business Day on which the conditions to the Closing set forth in Sections 6 and 7 below are satisfied or waived (or such other date as is mutually agreed to by the Company and each Buyer). 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.

(c) Purchase Price. The aggregate purchase price for the Notes to be purchased by each Buyer (the "**Purchase Price**") shall be the amount set forth opposite such Buyer's name in column (4) on the Schedule of Buyers.

(d) Form of Payment. On 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 5(g)) to the Company for the Notes 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 and (ii) the Company shall deliver to each Buyer a Note in the aggregate original principal amount as is set forth opposite such Buyer's name in column (3) of the Schedule of Buyers, duly executed on behalf of the Company and registered in the name of such Buyer or its designee.

2. ROYALTY PURCHASE.

(a) Definitions:

(i) “**Affiliate**” means, with respect to a Person, any Person that, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by or is under common control with such first Person at any time for so long as such Person controls, is controlled by or is under common control with such first Person. For purposes of this definition, “control” and, with correlative meanings, the terms “controlled by” and “under common control with” means: (i) the possession, directly or indirectly, of the power to direct the management and policies of a business entity, whether through the ownership of voting securities, by contract relating to voting rights or corporate governance or otherwise; (ii) the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities or other ownership interests of a business entity (or, with respect to a limited partnership or other similar entity, its general partner or controlling entity); or (iii) any other arrangement whereby a Person controls or has the right to control the board of directors or equivalent governing body or management of a corporation or other entity. For the avoidance of doubt, the Company and each Buyer shall not be deemed to be Affiliates of each other hereunder.

(ii) “**Assignment Agreement**” means that certain Assignment Agreement, dated as of March 24, 2025, by and between Ligand Pharmaceuticals Incorporated (“**Ligand**”) and LNHC, Inc. (“**LNHC**”).

(iii) “**Distributor**” means, with respect to a country, any third party that is used by the Company in such country on a non-exclusive basis, and without any license grant or other right from the Company or any of its Sublicensees under any Intellectual Property Rights, to distribute finished, packaged pharmaceutical products to pharmacies, managed care organizations, governmental agencies, and other group purchasing organizations (e.g., pharmaceutical benefits managers) and the like in such country. For clarity, a Distributor of a Product in a country shall not include any person or entity that has been granted a right, whether by license or otherwise and whether express or implied (including by subcontract or agency), by the Company or its Affiliates to manufacture any such Product.

(iv) “**Ferrer License Agreement**” means that certain License and API Supply Agreement, dated as of November 6, 2025 by and between the Company and Ferrer Internacional, S.A.

(v) “**Net Sales**” means, with respect to the Product, the gross amounts invoiced for sales or other disposition of such Product by or on behalf of the Company, its Affiliates, and their Sublicensees to third parties (other than the Company’s Affiliates, Sublicensees and Distributors) for use by the end user in a bona fide arm’s length transaction less (a) sales taxes or other similar taxes, (b) shipping and insurance charges, (c) actual allowances, rebates, credits, or refunds for returned or defective Products, (d) trade discounts and quantity discounts, retroactive price reductions, or other allowances actually allowed or granted from the billed amount and taken, (e) rebates, credits, and chargeback payments (or the equivalent thereof) granted to managed health care organizations, wholesalers, or to federal, state/provincial, local and other governments, including their agencies, purchasers, and/or reimbursers, or to trade customers, and (f) any import or export duties, tariffs, or similar charges incurred with respect to the import or export of the Product into or out of any country in the Territory. The Product will be considered sold when paid for. Notwithstanding the foregoing, Net Sales shall not include, and shall be deemed zero with respect to, (1) the distribution of reasonable quantities of promotional samples of the Product, (2) any Product provided for clinical trials or research purposes, or charitable or compassionate use purposes, or (3) any Product provided to any of the Company’s Affiliates, Sublicensees or other strategic partners under an agreement in which Net Sales by such Affiliate, Sublicensee or other strategic partner shall be subject to royalties hereunder.

(vi) “**Product**” means the “End Product” as defined in the Ferrer License Agreement, including XepiTM (ozenoxacin) cream, for topical use, and all other derivatives and modifications thereof.

(vii) “**Retained Sato Payment**” means fifty percent (50%) of the milestone payment payable by Sato in respect of the first commercial sale of Zelsuvmi in Japan pursuant to Section 14.1 of the Sato License Agreement.

(viii) “**Royalty Interest**” means an undivided percentage ownership interest in a percentage equal to five percent (5%) of all Net Sales of the Product in the Territory.

(ix) “**Royalty Interest Right**” means all of the Company’s right, title and interest in and to the Royalty Interest and all proceeds thereof.

(x) “**Royalty Payment**” means, for each calendar quarter, an amount payable to each Buyer with respect to the Royalty Interest Right.

(xi) “**Sato License Agreement**” means that certain License Agreement, dated as of January 12, 2017 by and between Sato Pharmaceutical Co., Ltd (“**Sato**”) and LNHC (as successor-in-interest to Novan, Inc.), as amended by that certain First Amendment to License Agreement, dated as of January 12, 2017, and that certain Second Amendment to License Agreement, dated as of October 5, 2018, in each case, by and between Sato and LNHC (as successor-in-interest to Novan, Inc.) and as assigned to Ligand pursuant to the Assignment Agreement.

(xii) “**Sato Payment**” means all royalty and milestone payments received by Ligand from Sato under the Sato License Agreement solely in respect of Zelsuvmi.

(xiii) “**Sublicensee**” means a third party or an Affiliate of the Company to which the Company grants a sublicense to make, use, sell or offer to sell the Product in the Territory, as the case may be, other than a Distributor. In no event will the Buyers or any of their Affiliates be deemed a Sublicensee.

(xiv) “**Territory**” means the “Territory” as defined in the Ferrer License Agreement.

(xv) “**Zelsuvmi**” means ZELSUVMITM (berdazimer) topical gel.

(b) Assignment of the Royalty Interest Right.

(i) As partial consideration for the Notes, the Company hereby transfers, assigns and conveys to each Buyer all of the Company's right, title and interest in and to the Royalty Interest Right on a pro rata basis in proportion to each Buyer's share of the Purchase Price as set forth in column (4) on the Schedule of Buyers.

(ii) Notwithstanding any provision in this Agreement to the contrary, each Buyer is only agreeing, on the terms and conditions set forth in this Agreement, to acquire and accept the Royalty Interest Right and is not assuming any liability or obligation of the Company of whatever nature, whether presently in existence or arising or asserted hereafter.

(iii) It is the intention of the parties hereto that the transfer, assignment and conveyance of the Royalty Interest Right as contemplated by this Agreement constitute partial consideration to each Buyer in a sale of the Notes by the Company to each Buyer and not a financing transaction, borrowing or loan. Accordingly, each of the parties shall treat the sale, transfer, assignment and conveyance of the Royalty Interest Right as a sale of an "account" or a "payment intangible" (as appropriate) in accordance with the UCC, and the Company hereby authorizes each Buyer, at the Company's sole cost and expense, to file financing statements (and continuation statements with respect to such financing statements when applicable) naming the Company as the debtor and such Buyer as the secured party in respect of the Royalty Interest Right.

(iv) As of the date hereof, the Royalty Interest Right and payment rights related thereto are free and clear of all Liens and upon the transfer, assignment and conveyance of the Royalty Interest Right and payment rights related thereto as contemplated by this Agreement, each Buyer shall hold its Royalty Interest Right free and clear of all Liens.

(c) Pass-through of Payments Received Under the Sato License Agreement. Beginning on the Closing Date, the Company shall pay each Buyer (excluding Ligand) any amounts (excluding the Retained Sato Payment) received by the Company from Ligand in connection with the Sato Payment, such amounts to be paid to each such Buyer on a pro rata basis in proportion to each such Buyer's share of the Purchase Price as set forth in column (4) on the Schedule of Buyers.

(d) Payment; Reports.

(i) Payment. The Company shall pay each Buyer the portion of the Royalty Payment and Sato Payment due to each Buyer on a quarterly basis, with such amounts due by the Company and received by each Buyer on or before the thirtieth (30th) day following the end of the calendar quarter in which such amounts were earned.

(ii) Reports. The Company shall deliver to each Buyer, on a quarterly basis, written reports (A) stating (1) the number, description and aggregate selling prices of the Product sold or otherwise disposed of, and deductions taken, during such applicable periods (and, to the extent applicable, adjustments and corrections from prior periods), including, for such purposes, statements of unit volume shipped and gross and net unit price(s) paid by purchasers of the Product and (2) the Net Sales derived therefrom, (B) including a report from a third party analyst of (1) total prescriptions, new prescriptions and estimated end user sales resulting from sales of the Product during such applicable periods and (2) such other additional reporting requirements and information as are reasonably requested by each Buyer, (C) the Sato Payment received by the Company from Ligand during such applicable periods and (D) the Company's calculation of the amounts owed to each Buyer pursuant to this Section 2 (the foregoing (A), (B), (C) and (D), collectively, the "**Progress Reports**"). The Progress Reports shall be delivered by the Company to each Buyer on the date that is the earliest to occur of (x) the date that is fifteen (15) days after the end of such calendar month and (y) the date that the amounts due under this Section 2 for such calendar quarter is made by the Company. The costs and expenses incurred by the Company in connection with the preparation and delivery of the Progress Reports shall be the sole responsibility of the Company.

(iii) Payment Terms; Exchange Rate. All amounts payable under this Section 2 shall be paid in U.S. dollars. Any late payments of any such amounts shall be subject to interest at an annual percentage rate equal to the lesser of twelve percent (12%) or the maximum rate permitted by law from the original due date until paid in full. When conversion of payments from any currency other than U.S. dollars is required, such conversion shall be at an exchange rate equal to the weighted average of the rates of exchange for the currency of the country from which such payments are payable as published by The Wall Street Journal, Eastern U.S. Edition, during the calendar quarter in which the applicable sales were made.

(iv) Audit Right. In addition to the Progress Reports, the Company will and will cause its Affiliates and any Sublicensees to maintain books and records pertaining to the Royalty Payment and the Sato Payment under this Agreement. Such records shall be kept for three (3) years following the end of the calendar quarter to which they pertain, or such longer period as may be required under applicable law. The Buyers will be entitled to audit the books and records of the Company and its Affiliates, and require the Company or its Affiliate to audit the books and records of any of its Sublicensees, relevant to calculating amounts to be paid under this Section 2. Such audits may be conducted during normal business hours upon reasonable prior written notice to the Company, and not more than once per calendar year. Any amounts shown to be owed to any Buyer but unpaid shall be paid within thirty (30) days after the audit report. Any overpayment by the Company revealed by an audit shall be credited against future payments owed by the Company to the Buyers (and if no further payments are due, shall be refunded by the Buyers to the Company within thirty (30) days after the audit report). The Buyers shall bear the full cost of such audit unless such audit discloses an underpayment by the Company of the greater of (a) five percent (5%) of the amount of royalties or other payments due under this Agreement for the audited period and (b) fifty thousand dollars (\$50,000), in which case, the Company shall bear the reasonable cost of such audit.

(e) Transferability. Notwithstanding anything to the contrary in this Agreement, each Buyer may assign, sell, pledge, factor, or otherwise transfer its right to receive the Royalty Payment and Sato Payment, in whole or in part, to any Person without the consent of the Company.

3. 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 and as of the Closing Date:

(a) Organization; Authority. Such Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the 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 Note, and (ii) upon conversion of its Note will acquire the Conversion Shares issuable upon conversion 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 or any department or agency thereof.

(c) Accredited Investor Status. Such Buyer is 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 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 general advertisement. The purchase of the Securities by such Buyer has not been solicited by or through anyone other than the Company.

(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 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 been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Buyer. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. 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 except as provided in the Registration Rights Agreement and Section 5(h) hereof: (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, (B) such Buyer shall have delivered to the Company (if requested by the Company) an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Buyer provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**"); *provided*, however, that no such opinion shall be required for transfers to affiliates of the Buyer or to another Buyer or its affiliates, provided that the transferee agrees in writing to be bound by the terms of this Agreement and the Registration Rights Agreement, and the Buyer provides customary representations regarding the status of the transferee as an affiliate. (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of 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 Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities; 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 Amended and Restated Lock-Up Agreement. Such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document (as defined in Section 4(b)), including, without limitation, this Section 3(i).

(j) Validity; Enforcement. This Agreement and the Registration Rights Agreement have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective 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.

4. 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, individually or 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). Other than the Persons (as defined below) set forth on Schedule 4(a), 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. 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 Notes and the reservation for issuance and issuance of the Conversion Shares issuable upon conversion of the Notes) have been duly authorized by the Company's board of directors or other governing body, as applicable, and (other than the filing with the SEC of one or more Registration Statements 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 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 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. "**Transaction Documents**" means, collectively, this Agreement, the Notes, the Security Documents, the Registration Rights Agreement, the Amended and Restated Lock-Up Agreements (as defined below), the Irrevocable Transfer Agent Instructions (as defined below) 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 issuance of the Notes is duly authorized and upon issuance in accordance with the terms of the Transaction Documents shall 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 maximum number of Conversion Shares issuable upon conversion of the Notes (assuming for purposes hereof that (x) the Notes are convertible at the Adjustment Price (as defined in the Notes) assuming a Conversion Date (as defined in the Note) as of the date hereof, (y) interest on the Notes shall accrue through the second anniversary of the Closing Date and will be converted in shares of Common Stock at a conversion price equal to the Adjustment Price assuming a Conversion Date as of the date hereof and (z) any such conversion shall not take into account any limitations on the conversion of the Notes set forth in the Notes). Upon issuance or conversion in accordance with the Notes, 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. 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 Notes and the Conversion Shares and the reservation for issuance of the Conversion 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 NYSE American (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), 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. 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 cause 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 will increase in certain circumstances. The Company further acknowledges that its obligation to issue the Conversion Shares pursuant to the terms of the Notes in accordance with this Agreement and the Notes 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 its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested shareholder, 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 its board of directors 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 3(g) of this Agreement or in the disclosure schedules to 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, are not as of the date hereof, and 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 4(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. Neither the Company, the Company's 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 Notes)), 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 of Directors of the Company).

(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 of directors of the Company in a certificate of designations 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 designations).

(ii) Authorized and Outstanding Capital Stock. As of November 6, 2025, the authorized capital stock of the Company consists of (A) 200,000,000 shares of Common Stock, of which, 3,061,681 are issued and outstanding and 2,669,167 shares are reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Notes) exercisable or exchangeable for, or convertible into, shares of Common Stock and (B) 22,000,000 shares of Preferred Stock, 60,168 of which are issued and outstanding. Zero 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. Schedule 4(r)(iii) sets forth the number of shares of Common Stock that are (A) reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Notes) and (B) that are, as of the date hereof, 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 the Buyers 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 without conceding that such identified Person is a 10% shareholder for purposes of federal securities laws).

(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) 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, 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 on Schedule 4(r), 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; (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 discussed in the SEC Documents or as set forth in Schedule 4(t), 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) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. Neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for, and neither the Company nor any such Subsidiary has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(v) Employee Relations. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of the Company or any of its Subsidiaries has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. No current (or former) executive officer or other key employee of the Company or any of its Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(w) Title.

(i) Real Property. Each of the Company and its Subsidiaries holds good title to all real property, leases in real property, facilities or other interests in real property owned or held by the Company or any of its Subsidiaries (the "**Real Property**") owned by the Company or any of its Subsidiaries (as applicable). The Real Property is free and clear of all Liens and is not subject to any rights of way, building use restrictions, exceptions, variances, reservations, or limitations of any nature except for (a) Liens for current taxes not yet due and (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto. Any Real Property held under lease by the Company or any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company or any of its Subsidiaries.

(ii) Fixtures and Equipment. Each of the Company and its Subsidiaries (as applicable) has good title to, or a valid leasehold interest in, the tangible personal property, equipment, improvements, fixtures, and other personal property and appurtenances that are used by the Company or its Subsidiary in connection with the conduct of its business (the "**Fixtures and Equipment**"). The Fixtures and Equipment are structurally sound, are in good operating condition and repair, are adequate for the uses to which they are being put, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are sufficient for the conduct of the Company's and/or its Subsidiaries' businesses (as applicable) in the manner as conducted prior to the Closing. Each of the Company and its Subsidiaries owns all of its Fixtures and Equipment free and clear of all Liens except for (a) liens for current taxes not yet due and (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto.

(x) Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor (“**Intellectual Property Rights**”) necessary to conduct their respective businesses as now conducted and presently proposed to be conducted. Each of the patents owned by the Company or any of its Subsidiaries is listed on Schedule 4(x)(i). No patents listed on Schedule 4(x) have expired or terminated or have been abandoned or, to the Company’s knowledge, are expected to expire or terminate or are expected to be abandoned, within three years from the date of this Agreement. The Company does not have any knowledge of any infringement by the Company or its Subsidiaries of Intellectual Property Rights of others. Except as set forth on Schedule 4(x)(ii), there is no claim, action or proceeding being made or brought, or to the knowledge of the Company or any of its Subsidiaries, being threatened, against the Company or any of its Subsidiaries regarding its Intellectual Property Rights. Neither the Company nor any of its Subsidiaries is aware of any facts or circumstances which might reasonably be expected to give rise to any of the foregoing infringements or claims, actions or proceedings. The Company and its Subsidiaries have taken reasonable security measures to protect (a) the secrecy, and confidentiality of all of their trade secrets and other proprietary know-how, and (b) the value of all of their Intellectual Property Rights.

(y) Environmental Laws.

(i) The Company and its Subsidiaries (A) are, in all material respects, in compliance with any and all Environmental Laws (as defined below), (B) have received all permits, licenses or other approvals required of them under applicable Environmental Laws that are material to conduct of their respective businesses and (C) are in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (A), (B) and (C), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term “**Environmental Laws**” means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, “**Hazardous Materials**”) into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(ii) No Hazardous Materials:

(A) Have, to the Company's knowledge, been disposed of or otherwise released from any Real Property of the Company or any of its Subsidiaries in a manner or amount that would be reasonably likely to create a material liability under any Environmental Laws, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or

(B) To the Company's knowledge, are present on, over, beneath, in or upon any Real Property or any portion thereof in quantities that would be reasonably likely to create a material liability under any Environmental Laws. No prior use by the Company or any of its Subsidiaries of any Real Property has occurred that violates any Environmental Laws, which violation would have a material adverse effect on the business of the Company or any of its Subsidiaries, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(iii) Neither the Company nor any of its Subsidiaries knows of any other person who or entity which has stored, treated, recycled, disposed of or otherwise located on any Real Property any Hazardous Materials, including, without limitation, such substances as asbestos and polychlorinated biphenyls.

(iv) None of the Real Properties are on any federal or state "Superfund" list or Liability Information System ("CERCLIS") list or any state environmental agency list of sites under consideration for CERCLIS, nor subject to any environmental related Liens.

(z) Subsidiary Rights. The Company or one of its Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company or such Subsidiary.

(aa) Tax Status. The Company and each of its Subsidiaries (i) has, in all material respects, 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 Internal Revenue Code of 1986, as amended (the "Code"). The net operating loss carryforwards ("NOLs") for United States federal income tax purposes of the consolidated group of which the Company is the common parent, if any, shall not be adversely effected by the transactions contemplated hereby. The transactions contemplated hereby do not constitute an "ownership change" within the meaning of Section 382 of the Code, thereby preserving the Company's ability to utilize such NOLs.

(bb) Internal Accounting and Disclosure Controls. As of the date hereof, Company and each of its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) that is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the 1934 Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Entity or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company or any of its Subsidiaries.

(cc) 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.

(dd) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an "investment company," an affiliate of an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(ee) Acknowledgement Regarding Buyers' Trading Activity. It is understood and acknowledged by the Company that, subject to compliance with the terms of the Amended and Restated 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 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 Amended and Restated 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 Conversion Shares 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 Notes or any other Transaction Document or any of the documents executed in connection herewith or therewith, subject to compliance with the Amended and Restated Lock-Up Agreements.

(ff) 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.

(gg) U.S. Real Property Holding Corporation. Neither the Company nor any of its Subsidiaries is, or has ever been, and so long as any of the Securities are held by any of the Buyers, shall become, a U.S. real property holding corporation within the meaning of Section 897 of the Code, and the Company and each Subsidiary shall so certify upon any Buyer's request.

(hh) Registration Eligibility. The Company is eligible to register the Registrable Securities (defined in the Registration Rights Agreement) for resale by the Buyers using Form S-1 promulgated under the 1933 Act.

(ii) Transfer Taxes. On the Closing Date, all stock transfer or other taxes (other than income or 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.

(jj) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries is subject to the Bank Holding Company Act of 1956, as amended (the “BHCA”) and to regulation by the Board of Governors of the Federal Reserve System (the “Federal Reserve”). Neither the Company nor any of its Subsidiaries or affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(kk) [Reserved.]

(ll) 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.

(mm) 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.

(nn) Management. Except as set forth in Schedule 4(nn) hereto, during the past three (3) 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.

(oo) Stock Option Plans. Each stock option granted by the Company was granted (i) in accordance with the terms of the applicable stock option plan of the Company and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no policy or practice of the Company to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(pp) No Disagreements with Accountants and Lawyers. 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.

(qq) No Disqualification Events. 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.

(rr) Other Covered Persons. 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.

(ss) 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.

(tt) Public Utility Holding Act. None of the Company nor any of its Subsidiaries is a “holding company,” or an “affiliate” of a “holding company,” as such terms are defined in the Public Utility Holding Act of 2005.

(uu) Federal Power Act. None of the Company nor any of its Subsidiaries is subject to regulation as a “public utility” under the Federal Power Act, as amended.

(vv) Ranking of Notes. Except for Permitted Senior Indebtedness (as defined in the Notes) secured by Permitted Liens (as defined in the Notes), no Indebtedness of the Company, at the Closing, will be senior to, or *pari passu* with, the Notes in right of payment, whether with respect to payment or redemptions, interest, damages, upon liquidation or dissolution or otherwise.

(ww) Potential Products; FDA; EMEA.

(i) The Company possesses all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct its business as currently conducted, including without limitation all such certificates, authorizations and permits required by the United States Food and Drug Administration (the “**FDA**”) or any other federal, state or foreign agencies or bodies engaged in the regulation of pharmaceuticals or biohazardous materials, except where the failure to so possess such certificates, authorizations and permits, individually or in the aggregate, would not result in a Material Adverse Effect. The Company has not received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect.

(ii) The Company has not received any written notices or statements from the FDA, the European Medicines Agency (the “**EMA**”) or any other governmental agency, and otherwise has no knowledge, that (i) any drug candidate of the Company (each a “**Potential Product**”) may or will be rejected or determined to be non-approvable; (ii) a delay in time for review and/or approval of a marketing authorization application or marketing approval application in any jurisdiction for any Potential Product (excluding any reasonable and customary additional clinical and non-clinical studies in connection with any such applications) is or may be required, requested or being implemented; (iii) one or more clinical studies for any Potential Product shall or may be requested or required in addition to the clinical studies submitted to the FDA prior to the date hereof as a precondition to or condition of issuance or maintenance of a marketing approval for any Potential Product; (iv) any license, approval, permit or authorization to conduct any clinical trial of or market any product or Potential Product of the Company has been, will be or may be suspended, revoked, modified or limited, except in the cases of clauses (i), (ii), (iii) and (iv) where such rejections, determinations, delays, requests, suspensions, revocations, modifications or limitations might not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(iii) To the Company's knowledge, the preclinical and clinical testing, application for marketing approval of, manufacture, distribution, promotion and sale of the products and Potential Products of the Company is in compliance, in all material respects, with all laws, rules and regulations applicable to such activities, including without limitation applicable good laboratory practices, good clinical practices and good manufacturing practices, except for such non-compliance as would not, individually or in the aggregate, have a Material Adverse Effect. The Company is not aware of any studies, tests or trial the results of which reasonably call into question the results of the tests and trials conducted by or on behalf of the Company. The Company has not received notice of adverse finding, warning letter or clinical hold notice from the FDA or any non-U.S. counterpart of any of the foregoing, or any untitled letter or other correspondence or notice from the FDA or any other governmental authority or agency or any institutional or ethical review board alleging or asserting noncompliance with any law, rule or regulation applicable in any jurisdiction, except notices, letters, and correspondences and non-U.S. counterparts thereof alleging or asserting such noncompliance as would not, individually or in the aggregate, have a Material Adverse Effect. The Company has not, either voluntarily or involuntarily, initiated, conducted or issued, or caused to be initiated, conducted or issued, any recall, field correction, market withdrawal or replacement, safety alert, warning, "dear doctor" letter, investigator notice, or other notice or action relating to an alleged or potential lack of safety or efficacy of any product or Potential Product of the Company, any alleged product defect of any product or Potential Product of the Company, or any violation of any material applicable law, rule, regulation or any clinical trial or marketing license, approval, permit or authorization for any product or potential product of the Company, and the Company is not aware of any facts or information that would cause it to initiate any such notice or action and has no knowledge or reason to believe that the FDA, the EMEA or any other governmental agency or authority or any institutional or ethical review board or other non-governmental authority intends to impose, require, request or suggest such notice or action.

(xx) Cybersecurity. The Company and its Subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants that would reasonably be expected to have a Material Adverse Effect on the Company's business. The Company and its Subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses. "**Personal Data**" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by the European Union General Data Protection Regulation ("**GDPR**") (EU 2016/679); (iv) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA**"); and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. There have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person or such, nor any incidents under internal review or investigations relating to the same except in each case, where such would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The Company and its Subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification except in each case, where such would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(yy) Compliance with Data Privacy Laws. The Company and its Subsidiaries are, and at all prior times were, in compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, and the Company and its Subsidiaries have taken commercially reasonable actions to prepare to comply with, and since May 25, 2018, have been and currently are in compliance with, the GDPR (EU 2016/679) (collectively, the “**Privacy Laws**”) except in each case, where such would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. To ensure compliance with the Privacy Laws, the Company and its Subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the “**Policies**”). The Company and its Subsidiaries have at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. The Company further certifies that neither it nor any Subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(zz) 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 or any of its 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.

5. 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 7 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 8 of this Agreement.

(b) Form D and Blue Sky. The Company shall file a Form D with respect to the Securities if required under Regulation D. 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. From the time Form S-3 is available to the Company for the registration of the Registrable Securities, 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.

(d) Use of Proceeds. The Company will use the proceeds from the sale of the Securities primarily to fund the purchase of the Product and for general corporate purposes. The proceeds shall not be used, directly or indirectly, for (i) the satisfaction of any indebtedness of the Company or any of its Subsidiaries, (ii) the redemption or repurchase of any securities of the Company or any of its Subsidiaries, or (iii) the settlement of any outstanding litigation. Notwithstanding the foregoing sentence, the Company may use proceeds to pay customary transaction fees and expenses related to the purchase of the Product, without the prior written consent of the Buyers.

(e) Financial Information. 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 for quotation (as the case may be) of all of the Registrable Securities upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed or designated for quotation (as the case may be) (subject to official notice of issuance) and shall maintain such listing or designation for quotation (as the case may be) of all Registrable Securities from time to time issuable under the terms of the Transaction Documents on such national securities exchange or automated quotation system. The Company shall maintain the Common Stock's listing or authorization for quotation (as the case may be) on the Principal Market, 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 5(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 \$300,000 for the legal fees of outside counsel and disbursements of Kelley Drye & Warren LLP, counsel to [BUYER] and a non-accountable amount of \$10,000 for the legal fees of Morgan, Lewis & Bockius LLP, special finance and collateral counsel to [BUYER] and a non-accountable amount of \$350,000 for the legal fees of outside counsel and disbursements of Latham & Watkins LLP, counsel to Ligand (collectively, the "**Transaction Expenses**") which amounts shall be withheld by such applicable Buyer from its Purchase Price at the Closing, provided, that the Company shall promptly reimburse Kelley Drye & Warren LLP, Morgan, Lewis & Bockius LLP and Latham & Watkins 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) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by an Investor in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Investor effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document, including, without limitation, Section 3(i) hereof; provided that an Investor and its pledgee shall be required to comply with the provisions of Section 3(i) hereof in order to effect a sale, transfer or assignment of Securities to such pledgee. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a Buyer.

(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 after the date of this 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. On or before 9:00 a.m., New York time, on the first (1st) Business Day after the date of this 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 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 Notes, the form of Security Documents, the form of CHRO Royalty Amendment (as defined below), the form of Amended and Restated Lock-Up Agreement, and the form of the Registration Rights Agreement) (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 or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. 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, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Buyers or any of their affiliates, on the other hand, shall terminate.

(ii) Limitations on 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 or any of its 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 a 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, or a duty not to trade on the basis of, 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, or a duty not to trade on the basis of, any material, non-public information regarding the Company or any of its Subsidiaries.

(j) Additional Registration Statements. Until the Applicable Date (as defined below) and at any time thereafter while any Registration Statement is not effective or the prospectus contained therein is not available for use or any Current Public Information Failure (as defined in the Registration Rights Agreement) exists, 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 (i) the securities set forth on Schedule 5(j); (ii) a registration statement on Form S-8; or (iii) 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 and available and not with respect to any Subsequent Placement)). “**Applicable Date**” means the earlier of (x) the first date on which the resale by the Buyers of all the Registrable Securities required to be filed on the initial Registration Statement (as defined in the Registration Rights Agreement) pursuant to the Registration Rights Agreement is declared effective by the SEC (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 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) Additional Issuance of Securities. So long as any Buyer beneficially owns any Securities, the Company will not, without the prior written consent of the Required Holders, issue any Notes (other than to the Buyers as contemplated hereby) and the Company shall not issue any other securities that would cause a breach or default under the Notes. The Company agrees that for the period commencing on the date hereof and ending on the date immediately following the 90th Trading Day after the Applicable Date (provided that such period shall be extended by the number of calendar days during such period and any extension thereof contemplated by this proviso on which any Registration Statement is not effective or any prospectus contained therein is not available for use or any Current Public Information Failure exists) (the “**Restricted Period**”), neither the Company nor any of its Subsidiaries shall directly or indirectly issue, offer, sell, grant any option or right to purchase, or otherwise dispose of (or announce any issuance, offer, sale, grant of any option or right to purchase or other disposition of) any equity security or any equity-linked or related security (including, without limitation, any “equity security” (as that term is defined under Rule 405 promulgated under the 1933 Act), any Convertible Securities (as defined below), any debt, any preferred stock or any purchase rights) (any such issuance, offer, sale, grant, disposition or announcement (whether occurring during the Restricted Period or at any time thereafter) is referred to as a “**Subsequent Placement**”). Notwithstanding the foregoing, this Section 5(k) shall not apply in respect of the issuance of (i) shares of Common Stock or standard options to purchase Common Stock to directors, officers or employees of the Company in their capacity as such pursuant to an Approved Stock Plan (as defined below), provided that (1) all such issuances (taking into account the shares of Common Stock issuable upon exercise of such options) after the date hereof pursuant to this clause (i) do not, in the aggregate, exceed more than 5% of the Common Stock issued and outstanding immediately prior to the date hereof and (2) the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Buyers; (ii) shares of Common Stock issued upon the conversion or exercise of Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the date hereof, provided that the conversion, exercise or other method of issuance (as the case may be) of any such Convertible Security is made solely pursuant to the conversion, exercise or other method of issuance (as the case may be) provisions of such Convertible Security that were in effect on the date immediately prior to the date of this Agreement, the conversion, exercise or issuance price of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered, none of such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects any of the Buyers; (iii) the Conversion Shares; (iv) shares of Common Stock issued pursuant to any Permitted ATM (as defined below); (v) shares of Common Stock issued pursuant to the Permitted Equity Line (as defined below); shares of Common Stock issued pursuant to the CPC Transaction (as defined below); (vi) any shares of Common Stock issued or issuable in connection with any bona fide strategic or commercial alliances, acquisitions, mergers, licensing arrangements, and strategic partnerships, provided, that (x) the primary purpose of such issuance is not to raise capital as reasonably determined, and (y) the purchaser or acquirer or recipient of the securities in such issuance solely consists of either (I) the actual participants in such strategic or commercial alliance, strategic or commercial licensing arrangement or strategic or commercial partnership, (II) the actual owners of such assets or securities acquired in such acquisition or merger or (III) the shareholders, partners, employees, consultants, officers, directors or members of the foregoing Persons, in each case, which is, itself or through its subsidiaries, an operating company or an owner of an asset, in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, and (IV) the number or amount of securities issued to such Persons by the Company shall not be disproportionate to each such Person’s actual participation in (or fair market value of the contribution to) such strategic or commercial alliance or strategic or commercial partnership or ownership of such assets or securities to be acquired by the Company, as applicable (each of the foregoing in clauses (i) through (vi), collectively the “**Excluded Securities**”). “**Approved Stock Plan**” means any employee benefit plan which has been approved by the board of directors of the Company prior to or subsequent to the date hereof pursuant to which shares of Common Stock and standard options to purchase Common Stock may be issued to any employee, officer or director for services provided to the Company in their capacity as such.

(l) Reservation of Shares. So long as any of the Notes 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 Notes then outstanding (assuming for purposes hereof that (x) the Notes are convertible at the Adjustment Price assuming a Conversion Date as of such applicable date of determination, (y) interest on the Notes shall accrue through the second anniversary of the Closing Date and will be converted in shares of Common Stock at a conversion price equal to the Adjustment Price assuming a Conversion Date as of such applicable date of determination and (z) any such conversion shall not take into account any limitations on the conversion of the Notes set forth in the Notes), (collectively, the “**Required Reserve Amount**”); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 5(l) be reduced other than proportionally in connection with any conversion, exercise and/or redemption, as applicable of Notes. 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) Other Notes: Variable Securities. So long as any Notes remain outstanding, the Company and each Subsidiary shall be prohibited from effecting or entering into an agreement to effect any Subsequent Placement involving a Variable Rate Transaction (other than pursuant to any Permitted ATM or Permitted Equity Line). “**Variable Rate Transaction**” means a transaction in which the Company or any Subsidiary (i) issues or sells any Convertible Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such Convertible Securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock, other than pursuant to a customary “weighted average” anti-dilution provision or (ii) enters into any agreement (including, without limitation, an equity line of credit or an “at-the-market” offering) whereby the Company or any Subsidiary may sell securities at a future determined price (other than standard and customary “preemptive” or “participation” rights). Each Buyer shall be entitled to obtain injunctive relief against the Company and its Subsidiaries to preclude any such issuance, which remedy shall be in addition to any right to collect damages. “**Permitted ATM**” means any at-the-market offering of Common Stock pursuant to an at-the-market sales agreement or similar agreement, including under a registration statement filed with and declared effective by the SEC, provided that such offering is conducted in accordance with applicable securities laws. “**Permitted Equity Line**” means the committed equity financing facility pursuant to that certain Common Stock Purchase Agreement, dated as of July 26, 2024, by and between the Company and Tikkun Capital LLC (as amended, restated, supplemented or otherwise modified from time to time), and any transactions contemplated thereby, including the issuance and sale of shares thereunder.

(o) Dilutive Issuances. For so long as any Notes remain outstanding, the Company shall not, in any manner, enter into or affect any Subsequent Placement if the effect of such Subsequent Placement is to cause the Company to be required to issue upon conversion of any Notes any shares of Common Stock in excess of that number of shares of Common Stock which the Company may issue upon conversion of the Notes without breaching the Company's obligations under the rules or regulations of the Principal Market.

(p) Passive Foreign Investment Company. The Company shall conduct its business, and shall cause its Subsidiaries to conduct their respective businesses, in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the Code.

(q) Restriction on Redemption and Cash Dividends. So long as any Notes are outstanding, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, any securities of the Company without the prior express written consent of the Buyers, except as such dividend or distribution relates to the contribution of equity interest of Chromocell Therapeutics Australia Pty. Ltd, an Australian company and a wholly-owned subsidiary of the Company, to Channel Pharmaceutical Corporation, a Nevada corporation and a wholly-owned subsidiary of the Company ("CPC") or any future capitalization of CPC (together, the "**CPC Transactions**").

(r) Corporate Existence. So long as any Buyer beneficially owns any Notes, the Company shall not be party to any Fundamental Transaction (as defined in the Notes) unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Notes.

(s) Stock Splits. Until the Notes and all notes issued pursuant to the terms thereof are no longer outstanding, the Company shall not effect any stock combination, reverse stock split or other similar transaction (or make any public announcement or disclosure with respect to any of the foregoing) without the prior written consent of the Required Holders (as defined below); provided, however, that the Company may effect one (1) stock combination, reverse stock split or other similar transaction as necessary to comply with the requirements of the Principal Market without the prior written consent of the Required Holders.

(t) Conversion Procedures. Each of the form of Conversion Notice (as defined in the Notes) included in the Notes set forth the totality of the procedures required of the Buyers in order to convert the Notes. Except as provided in Section 6(d), no additional legal opinion, other information or instructions shall be required of the Buyers to convert their Notes. The Company shall honor conversions of the Notes and shall deliver the Conversion Shares in accordance with the terms, conditions and time periods set forth in the Notes.

(u) 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.

(v) 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.

(w) 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.

(x) 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.

(y) Shareholder Approval. Solely to the extent required by the Principal Market rules, the Company shall either (x) if the Company shall have obtained the prior written consent of the requisite shareholders (the “**Shareholder Consent**”) to obtain the Shareholder Approval (as defined below), inform 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, but prior to the forty-fifth (45th) calendar day after the Closing Date (or, if such filing is delayed by a court or regulatory agency, in no event later than 90 calendar days after the Closing), an information statement with respect thereto or (y) provide each shareholder entitled to vote at a special meeting of shareholders of the Company (the “**Shareholder Meeting**”), which shall be promptly called and held not later than January 1, 2026 (the “**Shareholder Meeting Deadline**”), a proxy statement, in each case, in a form reasonably acceptable to the Buyers, at the expense of the Company, with the Company obligated to reimburse the reasonable expenses of the Buyers’ counsel at Kelley Drye & Warren LLP and Latham & Watkins LLP incurred in connection therewith. The proxy statement, if any, shall solicit each of the Company’s shareholder’s affirmative vote at the Shareholder Meeting for approval of resolutions (“**Shareholder Resolutions**”) providing for the approval of 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 Notes) (such affirmative approval being referred to herein as the “**Shareholder Approval**”, and the date such Shareholder Approval is obtained, the “**Shareholder Approval Date**”), and the Company shall use its reasonable best efforts to solicit its shareholders’ approval of such resolutions and to cause the Board of Directors of the Company to recommend to the shareholders that they approve such resolutions. The Company shall be obligated to seek to obtain the Shareholder Approval by the Shareholder Meeting Deadline. If, despite the Company’s reasonable best efforts, the Shareholder Approval is not obtained on or prior to the Shareholder Meeting Deadline, the Company shall cause an additional Shareholder Meeting to be held on or prior to April 1, 2025. If, despite the Company’s reasonable best efforts, the Shareholder Approval is not obtained after such subsequent shareholder meetings, the Company shall cause an additional Shareholder Meeting to be held semi-annually thereafter until such Shareholder Approval is obtained.

(z) No Waiver of Amended and Restated Lock-Up Agreements. The Company shall not amend, waive, modify or fail to use reasonable best efforts to enforce any provision of any Amended and Restated Lock-Up Agreement. For the avoidance of doubt, no Buyer shall be a third party beneficiary of any Amended and Restated Lock-Up Agreement.

(aa) 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, Morgan, Lewis & Bockius LLP and Latham & Watkins 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 8 hereof or otherwise.

(bb) Collateral Agent. Each Buyer hereby (i) appoints Ligand, as the collateral agent hereunder and under the other Security Documents (in such capacity, the “**Collateral Agent**”), and (ii) authorizes the Collateral Agent (and its officers, directors, employees and agents) to take such action on such Buyer’s behalf in accordance with the terms hereof and thereof. The Collateral Agent shall not have, by reason hereof or any of the other Security Documents, a fiduciary relationship in respect of any Buyer. Neither the Collateral Agent nor any of its officers, directors, employees or agents shall have any liability to any Buyer for any action taken or omitted to be taken in connection hereof or any other Security Document except to the extent caused by its own gross negligence or willful misconduct, and each Buyer agrees to defend, protect, indemnify and hold harmless the Collateral Agent and all of its officers, directors, employees and agents (collectively, the “**Collateral Agent Indemnitees**”) from and against any losses, damages, liabilities, obligations, penalties, actions, judgments, suits, fees, costs and expenses (including, without limitation, reasonable attorneys’ fees, costs and expenses) incurred by such Collateral Agent Indemnitee, arising from or in connection with the performance by such Collateral Agent Indemnitee of the duties and obligations of Collateral Agent pursuant hereto or any of the Security Documents, solely to the extent that such Collateral Agent Indemnitee is not able to recover such amounts from the Company. No Buyer shall be liable to any Collateral Agent Indemnity for any indirect or consequential damages or for any losses, damages, liabilities, obligations, penalties, actions, judgments, suits, fees, costs and expenses to the extent arising from Collateral Agent’s own gross negligence or willful misconduct. The Collateral Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Holders, and such instructions shall be binding upon all holders of Notes; provided, however, that the Collateral Agent shall not be required to take any action which, in the reasonable opinion of the Collateral Agent, exposes the Collateral Agent to liability or which is in violation of this Agreement or any other Transaction Document or applicable law. The Collateral Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Transaction Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

(cc) Successor Collateral Agent.

(i) The Collateral Agent may resign from the performance of all its functions and duties hereunder and under the other Transaction Documents at any time by giving at least ten (10) Business Days’ prior written notice to the Company and each holder of Notes. Such resignation shall take effect upon the acceptance by a successor Collateral Agent of appointment pursuant to clauses (ii) and (iii) below or as otherwise provided below. If at any time the Collateral Agent (together with its affiliates) beneficially owns less than \$100,000 in aggregate principal amount of Notes, the Required Holders may, by written consent, remove the Collateral Agent from all its functions and duties hereunder and under the other Transaction Documents.

(ii) Upon any such notice of resignation or removal, the Required Holders shall appoint a successor collateral agent. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor agent, such successor collateral agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the collateral agent, and the Collateral Agent shall be discharged from its duties and obligations under this Agreement and the other Transaction Documents. After the Collateral Agent’s resignation or removal hereunder as the collateral agent, the provisions of this Section 5(cc) shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Collateral Agent under this Agreement and the other Transaction Documents.

(iii) If a successor collateral agent shall not have been so appointed within ten (10) Business Days of receipt of a written notice of resignation or removal, the Collateral Agent shall then appoint a successor collateral agent who shall serve as the Collateral Agent until such time, if any, as the Required Holders appoint a successor collateral agent as provided above.

(iv) In the event that a successor Collateral Agent is appointed pursuant to the provisions of this Section 5(cc) that is not a Buyer or an affiliate of any Buyer (or the Required Holders or the Collateral Agent (or its successor), as applicable, notify the Company that they or it wants to appoint such a successor Collateral Agent pursuant to the terms of this Section 5(cc)), the Company and each Subsidiary thereof covenants and agrees to promptly take all actions reasonably requested by the Required Holders or the Collateral Agent (or its successor), as applicable, from time to time, to secure a successor Collateral Agent satisfactory to the requesting part(y)(ies), in their sole discretion, including, without limitation, by paying all reasonable and customary fees and expenses of such successor Collateral Agent, by having the Company and each Subsidiary thereof agree to indemnify any successor Collateral Agent pursuant to reasonable and customary terms and by each of the Company and each Subsidiary thereof executing a collateral agency agreement or similar agreement and/or any amendment to the Security Documents reasonably requested or required by the successor Collateral Agent.

6. 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 Notes in which the Company shall record the name and address of the Person in whose name the Notes have been issued (including the name and address of each transferee), the principal amount of the Notes held by such Person and the number of Conversion Shares issuable pursuant to the terms of the Notes. 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 acceptable to each of the Buyers (the “**Irrevocable Transfer Agent Instructions**”) to issue certificates or credit shares to the applicable balance accounts at The Depository Trust Company (“**DTC**”), registered in the name of each Buyer or its respective nominee(s), for the Conversion Shares in such amounts as specified from time to time by each Buyer to the Company upon conversion of the Notes. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 6(b), and stop transfer instructions to give effect to Section 3(i) hereof, will be given by the Company to its transfer agent with respect to the Securities, and that the Securities shall otherwise be freely transferable on the books and records of the Company, as applicable, to the extent 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 3(i), 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 at DTC in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment. In the event that such sale, assignment or transfer involves Conversion Shares sold, assigned or transferred pursuant to an effective registration statement or in compliance with Rule 144, the transfer agent shall issue such shares to such Buyer, assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 6(d) below. 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 6(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 6(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 the legal opinion referred to in the Irrevocable Transfer Agent Instructions to the Company’s transfer agent on each Effective Date (as defined in the Registration Rights Agreement). 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.

(c) Legends. Each Buyer understands that the Securities have been issued (or will be issued in the case of the Conversion 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 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 (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(d) Removal of Legends. Certificates evidencing Securities shall not be required to contain the legend set forth in Section 6(c) above or any other legend (i) while a registration statement (including a Registration Statement) covering the resale of such Securities is effective under the 1933 Act, (ii) following any sale of such Securities pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), (iii) if such Securities are eligible to be sold, assigned or transferred under Rule 144 (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), (iv) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that such Buyer provides the Company with an opinion of counsel to such Buyer, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the 1933 Act or (v) if such legend is not required under applicable requirements of the 1933 Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC). 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 6(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 such Securities are Conversion 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 system or (B) if the Company's transfer agent is not participating in FAST, issue and deliver (via reputable overnight courier) to such Buyer, a certificate representing such Securities that is free from all restrictive and other legends, 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.

(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, either (I) if the Transfer Agent is not participating in FAST, 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, to credit the balance account of such Buyer or such Buyer's designee with DTC for such number of Conversion Shares submitted for legend removal by such Buyer pursuant to Section 6(d) above or (II) if the Registration Statement covering the resale of the Conversion Shares submitted for legend removal by such Buyer pursuant to Section 6(d) above (the "**Unavailable Shares**") is not available for the resale of such Unavailable Shares and the Company fails to promptly, but in no event later than as required pursuant to the Registration Rights Agreement (x) so notify such Buyer and (y) deliver the Conversion Shares electronically without any restrictive legend by crediting such aggregate number of Conversion Shares submitted for legend removal by such Buyer pursuant to Section 6(d) above to such Buyer'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 "**Delivery Failure**"), 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 2% of the product of (A) the sum of the number of shares of Common Stock not issued to such Buyer on or prior to the Required Delivery Date and to which such Buyer is entitled, and (B) any trading price of the Common Stock selected by such Buyer in writing as in effect at any time during the period beginning on the date of the delivery by such Buyer to the Company of the applicable Conversion Shares and ending on the applicable Share Delivery Date. In addition to the foregoing, if on or prior to the Required Delivery Date either (I) if the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver a certificate to a Buyer and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, credit the balance account of such Buyer or such Buyer's designee with DTC for the number of shares of Common Stock to which such Buyer submitted for legend removal by such Buyer pursuant to Section 6(d) above (ii) below or (II) a Notice Failure occurs, and if on or after such Trading Day such Buyer purchases (in an open market transaction 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 6(d) above that such Buyer is entitled to receive from the Company (a "**Buy-In**"), then the Company shall, within two (2) Trading Days after such Buyer's request and in such Buyer's discretion, either (i) pay cash to such Buyer in an amount equal to such Buyer's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any, for the shares of Common Stock so purchased) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit such Buyer's balance account shall terminate and such shares shall be cancelled, or (ii) 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 representing such 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 shares of Conversion Shares that the Company was required to deliver to such Buyer by the Required Delivery Date multiplied by (B) the lowest Closing Sale Price (as defined in the Notes) of the Common Stock on any Trading Day 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 date of such delivery and payment under this clause (ii). 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 Notice Failure and/or Delivery Failure, this Section 6(e) shall not apply to the applicable Buyer the extent the Company has already paid such amounts in full to such Buyer with respect to such Notice Failure and/or Delivery Failure, as applicable, pursuant to the analogous sections of the Note held by such Buyer.

- (f) FAST Compliance. While any Notes remain outstanding, the Company shall maintain a transfer agent that participates in FAST.

7. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

(a) The obligation of the Company hereunder to issue and sell the Notes 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) 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 5(g)) for the Note being purchased by such Buyer at the Closing by wire transfer of immediately available funds in accordance with the Flow of Funds Letter.

(iii) 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.

8. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.

(a) The obligation of each Buyer hereunder to purchase its Note 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) 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 a Note in such original principal amount as is set forth across from such Buyer's name in column (3) 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 Sullivan & Worcester LLP, the Company's counsel, dated as of the Closing Date, in the form acceptable to such Buyer.

(iii) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, in the form 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 and each of its Subsidiaries in each such entity's 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) The Company shall have delivered to such Buyer a certificate evidencing the Company's qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which the Company conducts business and is required to so qualify, as of a date within ten (10) days of the Closing Date.

(vi) The Company shall have delivered to such Buyer a certified copy of the Articles of Incorporation 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 4(b) as adopted by the Company's 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 designated for quotation or listed (as applicable) 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 or designate for quotation (as the case may be) the Conversion Shares.

(xv) The Company and each Buyer set forth on Schedule 8(a)(xv) shall have duly executed and delivered to such Buyer an amended and restated Lock-Up Agreement in substantially the form attached hereto as **Exhibit D** (each, an “**Amended and Restated Lock-Up Agreement**”) to which they are a party.

(xvi) 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**”).

(xvii) 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.

(xviii) The Company shall have delivered to such Buyer the fully executed Amendment No. 1 to Purchase and Sale Agreement, by and among the Company (formerly Channel Therapeutics Corporation), CPC, Nomis Royaltyvest LLC, Ligand, and Madison Royalty LLC, in the form of **Exhibit E** attached hereto (the “**CHRO Royalty Amendment**”).

(xix) The Company shall have delivered to the Collateral Agent the fully executed Pledge Agreement, by and among the Company and the Collateral Agent together with all reasonably requested UCC-1 filing statements in form for filing.

(xx) The Company and Ligand shall amend that certain Assignment Agreement, dated as of March 24, 2025, by and between Ligand and LNHC, Inc. (as predecessor to the Company) so that (x) Ligand retains the portion of the Sato Payment that is in proportion to Ligand's share of the Purchase Price as set forth in column (4) on the Schedule of Buyers (the "**Retained Ligand Payment**") and (y) Ligand passes through to the Company the portion of the Sato Payment that is not the Retained Ligand Payment.

9. TERMINATION.

In the event that the Closing shall not have occurred with respect to a Buyer within five (5) days of the date hereof, then such Buyer shall have the right to terminate its obligations under this Agreement with respect to itself at any time on or after the close of business on such date without liability of such Buyer to any other party; provided, however, (i) the right to terminate this Agreement under this Section 9 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 Notes 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 5(g) above. Nothing contained in this Section 9 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.

10. 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 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, 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/or any of its Subsidiaries and any Buyer, or any instruments any Buyer received from the Company and/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 Required Holders (as defined below), and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 10(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) and provided further that the provisions of Sections 5(bb) and 5(cc) above cannot be amended or waived without the additional prior written approval of the Collateral Agent or its successor. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the 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 10(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, all holders of the Notes. From the date hereof and while any Notes are outstanding, the Company shall not be permitted to receive any consideration from a Buyer or a holder of Notes 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 Notes in a manner that is more favorable than to other similarly situated Buyers or holders of Notes, or (ii) to treat any Buyer(s) or holder(s) of Notes in a manner that is less favorable than the Buyer or holder of Notes 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, 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. "**Required Holders**" means (I) prior to the Closing Date, each Buyer entitled to purchase Notes at the Closing and (II) on or after the Closing Date, 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) issued or issuable hereunder or pursuant to the Notes.

(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 email addresses for such communications shall be:

If to the Company:

Pelthos Therapeutics Inc.
4020 Stirrup Creek Drive
Suite 110
Durham, NC27703
Telephone:
Attention: Scott M. Plesha, Chief Executive Officer
E-Mail:

With a copy (for informational purposes only) to:

Sullivan & Worcester LLP
1251 Avenue of the Americas
New York, NY 10020
Telephone:
Attention: David Danovitch, Esq.
E-Mail:

If to the Transfer Agent:

Nevada Agency and Transfer Company
50 West Liberty Street, Suite 880
Reno, NV 89501
Telephone:
Attention: Amanada 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:
Attention: Michael A. Adelstein, Esq.
E-mail:

and

Morgan, Lewis & Bockius LLP
2222 Market Street
Philadelphia, PA 19103-3007
Telephone:
Attention: Andrew R. Mariniello
E-mail:

and

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Telephone:
Attention: Peter Handrinos; Leah Sauter
Email:

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 and Morgan, Lewis & Bockius LLP shall only be provided copies of notices sent to their clients as specified on the Schedule of Buyers and Latham & Watkins 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 Notes. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Holders, including, without limitation, by way of a Fundamental Transaction (as defined in the Notes) (unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Notes). 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, including transfers to affiliates of such Buyer or to another Buyer or its affiliates, provided that the transferee agrees in writing to be bound by the terms of this Agreement and the Registration Rights Agreement 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 10(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 the Collateral Agent, each Buyer and each holder of any Securities and all of their shareholders, 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 Indemnatee 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 Indemnatee 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 in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim brought or made against such Indemnatee 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 Indemnatee 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, (C) any disclosure properly made by such Buyer pursuant to Section 5(i), or (D) 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 10(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 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 (as the case may be), 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 10(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 10(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 10(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 and its Subsidiaries 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 its Subsidiaries 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, each Subsidiary 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/ Francis P. Knuettel II
Name: Francis P. Knuettel II
Title: CFO

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:

[BUYER]

By: _____
Name:
Title:
Maximum Percentage:

SCHEDULE OF BUYERS

(1)	(2)	(3)	(4)	(5)
Buyer	Mailing Address and E-mail Address	Original Principal Amount of Notes	Purchase Price	Legal Representative's Mailing Address and E-mail Address

PLEDGE AGREEMENT

DATE: November 6, 2025

PARTIES:

Pledgor: PELTHOS THERAPEUTICS INC., a Nevada Corporation (the “Pledgor”)
4020 Stirrup Creek Drive, Suite 110
Durham, NC 27703
Attn: Scott M. Plesha

Secured Party: LIGAND PHARMACEUTICALS INCORPORATED, a Delaware Corporation, in its capacity as collateral agent for each Buyer of a Convertible Note (as defined below) (the “Secured Party”)
555 Heritage Drive, Suite 200
Jupiter, FL 33458
Attn: Richard Baxter

and

3911 Sorrento Valley Blvd., Suite 110
San Diego, CA 92121
Attn: Chief Legal Officer

RECITALS:

A. The Pledgor is the owner of and agrees that it is pledging the Collateral (as defined below). Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the senior secured convertible notes issued to each Buyer by Pledgor dated on or around the date hereof (the “Convertible Note”) or the Securities Purchase Agreement, as applicable (the “Security Purchase Agreement” together with the Convertible Note, the “Note Documents”).

B. As a condition precedent to the Closing of the Convertible Note, the Buyers have required that Pledgor executes and delivers this Pledge Agreement in order to secure, among other things, its obligations to Secured Party under the Convertible Note and the Securities Purchase Agreement (the “Obligations”).

C. Pledgor acknowledges and agrees that (i) it will pledge the Collateral for the benefit of Secured Party on behalf of itself and each Buyer of a Convertible Note; (ii) the Pledgor’s execution and delivery of this Pledge Agreement is a material inducement to the Buyers’ execution of the Note Documents; and (iii) without this Pledge Agreement, the Buyers would not otherwise provide the financial accommodations set forth in the Note Documents.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Pledge.

(a) Pledgor hereby grants to Secured Party for the benefit of itself and as representative for the benefit of its affiliates and for the benefit of each Buyer of a Convertible Note, a first priority lien on and security interest in, and acknowledges and agrees that Secured Party has and shall continue to have a continuing first priority lien on and security interest in, all right, title, and interest of the Pledgor, whether now owned or existing or hereafter created, acquired, or arising and wherever located, in and to the Collateral, subject in priority to no other lien or security interest (other than Permitted Senior Indebtedness), as security for the payment and performance of (a) the Pledgor's Obligations (whether arising before or after the filing of a petition in bankruptcy and including, without limitation, interest which but for the filing of a petition in bankruptcy would accrue on such obligations) (collectively, the "Pledgor Debt"), (b) any and all indebtedness, obligations, and liabilities of the Pledgor to Secured Party or any affiliate of Secured Party (whether arising before or after the filing of a petition in bankruptcy and including, without limitation, interest which but for the filing of a petition in bankruptcy would accrue on such obligations) under or related to each guaranty by the Pledgor of all or any part of the Pledgor Debt, whether such indebtedness, obligations, and liabilities of the Pledgor are due or to become due, and whether now existing or hereafter arising and whether several, joint or joint and several, and (c) any and all expenses and charges, legal or otherwise, suffered or incurred by Secured Party or any affiliate of Secured Party in collecting or enforcing any of such indebtedness, obligations or liabilities or in realizing on or protecting or preserving any security therefor, including, without limitation, the lien and security interest granted hereby (all of the foregoing being hereinafter referred to collectively as the "Secured Obligations").

(b) "Collateral" means the Pledged Receivables and all Proceeds and products of, substitutions and replacements of, and additions to, the foregoing.

(c) "Covered Product Revenue Payment" means, for each calendar quarter from and after October 1, 2025, ten percent (10%) of all aggregate Net Sales (as defined in the Securities Purchase Agreement) of the Product (as defined in the Securities Purchase Agreement) in the Territory (as defined in the Securities Purchase Agreement); provided, however, that the Company shall only accrue five percent (5%) of such payments as liabilities until the occurrence of an Event of Default under the Note Documents.

(d) "Pledged Receivables" means (a) the Covered Product Revenue Payments, (b) the Sato Payment (other than the Retained Sato Payment, each as defined in the Securities Purchase Agreement)), (c) all "accounts receivable" from sales and (d) all Accounts as defined in the Uniform Commercial Code as in effect in the state of New York and each other applicable jurisdiction ("UCC"), each in respect of the Pledgor and each with respect to the Covered Product Revenue Payments and the Sato Payment (other than the Retained Sato Payment).

(e) "Proceeds" means "proceeds," as such term is defined in the UCC, and, in any event, shall include, without limitation, (a) any and all accounts, instruments, cash or other forms of money or currency or other proceeds payable to the Pledgor from time to time in respect of the Collateral, (b) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Pledgor from time to time with respect to any of the Collateral, (c) any and all payments (in any form whatsoever) made or due and payable to the Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any Person acting under color of governmental authority), (d) any claim of the Pledgor against third parties in respect of the Collateral, (e) all certificates, dividends, distributions, cash, instruments and other property received or distributed in respect of or in exchange for any Collateral and (f) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

2. Covenants and Representations. Pledgor represents, warrants and covenants to Secured Party as follows:

(a) Pledgor agrees to take no action that could impair or adversely affect (i) the value or validity of the Collateral or which could encumber, dilute or cloud any of Pledgor's rights, title or interest therein or (ii) the first priority lien granted to the Secured Party, other than any security interest granted in connection with the Permitted Senior Indebtedness;

(b) Pledgor will not make any compromise, adjustment, settlement or termination in connection with the Collateral without the prior written consent of Secured Party;

(c) Pledgor will at all times defend the Collateral against any and all claims of any person adverse to the claims of Secured Party;

(d) the execution and delivery of this Pledge Agreement, and the performance of its terms, will not result in any violation of or constitute a default under the terms of any agreement, or other instrument, license, judgment, order, statute, ordinance or other governmental rule or regulation applicable to the Pledgor or the Collateral;

(e) upon its execution and delivery, this Pledge Agreement shall create an enforceable and valid lien in the Collateral and the Pledge Agreement shall be the fully valid and enforceable obligation of the Pledgor;

(f) Pledgor shall at all times maintain and defend the Secured Party's security interest as a first priority security interest subject only to any security interest granted in connection with the Permitted Senior Indebtedness;

(g) Pledgor is an entity duly organized and validly existing and in good standing under the laws of Nevada, and has the requisite power and authority to own its properties and to carry on its business as now being conducted and as presently proposed to be conducted. Pledgor 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 in relation to the Pledgor (as defined in the Securities Purchase Agreement);

(h) Pledgor has the requisite power and authority to enter into and perform its obligations under this Pledge Agreement in accordance with the terms hereof and thereof. The execution and delivery of this Pledge Agreement by the Pledgor, and the consummation by the Pledgor of the transactions contemplated hereby and thereby have been duly authorized by the Pledgor's board of directors or other governing body, as applicable, and no further filing, consent or authorization is required by the Pledgor, its board of directors or its shareholders or other governing body. This Pledge Agreement has been duly executed and delivered by the Pledgor and constitutes the legal, valid and binding obligations of the Pledgor, enforceable against the Pledgor in accordance with its 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;

(i) The execution, delivery and performance of this Pledge Agreement by the Pledgor and the consummation by the Pledgor of the transactions contemplated hereby and thereby will not (i) result in a violation of the Articles of Incorporation (as defined in the Securities Purchase Agreement) (including, without limitation, any certificate of designation contained therein), Bylaws (as defined in the Securities Purchase Agreement), certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Pledgor or any capital stock or other securities of the Pledgor, (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 material agreement, indenture or instrument to which the Pledgor is a party, or (iii) result in a violation of any material law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of NYSE American and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Pledgor or by which any property or asset of the Pledgor 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;

(j) Pledgor is and will continue to be the legal and beneficial sole owner of the Collateral granted or purported to be granted by it free and clear of any Lien, claim, option or right of others except with respect to Permitted Senior Indebtedness and except for the security interest created by this Pledge Agreement, and Pledgor shall not sell, dispose of or otherwise transfer any portion of the Collateral No effective financing statement or other instrument similar in effect covering all or any part of such Collateral or listing Pledgor or any trade name of Pledgor as debtor is on file in any recording office, except as may have been filed with respect to Permitted Senior Indebtedness;

(k) This Pledge Agreement creates in favor of the Secured Party for the benefit of the Holders a valid first priority security interest in the Collateral granted by Pledgor, all filings and other actions necessary to perfect the security interest in the Collateral granted by Pledgor have been duly made or taken and are in full force and effect, and such security interest is a valid first priority lien subject to no other liens (other than with respect to Permitted Senior Indebtedness); and

(l) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or any other third party is required for (i) the grant by Pledgor of the security interest granted hereunder or for the execution, delivery or performance of this Pledge Agreement by Pledgor, (ii) the perfection or maintenance of the security interest created hereunder, except for the filing of financing and continuation statements under the UCC, or (iii) the exercise by the Secured Party of its rights provided for in this Pledge Agreement or the remedies in respect of the Collateral pursuant to this Pledge Agreement, except as may be required in connection with the disposition of any portion of the Collateral by laws affecting the offering and sale of securities generally.

3. UCC Filing.

(a) Pledgor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any relevant jurisdiction any financing statements or continuation statements with respect to the Collateral or any part thereof and amendments thereto and continuations thereof that (i) describe the collateral covered thereby in any manner that Secured Party reasonably determines is necessary or advisable to ensure the perfection of the security interest in the Collateral granted under this Pledge Agreement and (ii) contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment, including whether such Grantor is an organization and the type of organization. Pledgor agrees to provide such information to Secured Party promptly upon reasonable request.

(b) Pledgor shall not (i) change its principal place of business or its chief executive office without having given the Secured Party at least fifteen (15) days' prior written notice or (ii) change its name, its organizational identification number or its jurisdiction of organization without having given the Secured Party at least thirty (30) days' prior written notice; provided that, in each case under clauses (i) and (ii), (x) no such change shall be permitted hereunder if not permitted under the Note Documents and (y) Pledgor shall (1) take all action (if any) that is necessary to maintain the security interest of the Secured Party in the Collateral intended to be granted hereby at all times perfected and in full force and effect, including filing UCC-3 statements of amendment where appropriate, and (2) reasonably promptly thereafter provide evidence of the same to the Secured Party.

4. Events of Default. An "Event of Default" shall be the occurrence of any one or more of the following:

(a) default in the payment when due (whether by demand, lapse of time, acceleration or otherwise) of the Secured Obligations or any part thereof; or

(b) default in the observance or performance of any covenant set forth herein; or

(c) any representation or warranty made by the Pledgor herein, or in any statement or certificate furnished by it pursuant hereto, shall be false in any material respect as of the date of the issuance or making thereof; or

(d) default in the observance or performance of any terms or provisions of any mortgage, security agreement or any other instrument or document securing any Secured Obligations or setting forth terms and conditions applicable thereto or otherwise relating thereto which default continues unremedied beyond any period of grace expressly applicable thereto, or this Pledge Agreement or any such other mortgage, security agreement, instrument or document shall for any reason not be or shall cease to be in full force and effect or any of the foregoing is declared to be null and void; or

(e) default shall occur under any evidence of indebtedness issued, assumed or guaranteed by the Pledgor or under any indenture, agreement or other instrument under which the same may be issued, and such default shall continue for a period of time sufficient to permit the acceleration of the maturity of any such indebtedness (whether or not such maturity is in fact accelerated), or any such indebtedness shall not be paid when due (whether by lapse of time, acceleration or otherwise); or

(f) any judgment or judgments, writ or writs, or warrant or warrants of attachment, or any similar process or processes shall be entered or filed against the Pledgor or against any of their property or assets and which remains unvacated, unbonded, unstayed or unsatisfied for a period of 30 days; or

(g) any Event of Default (as defined in the Convertible Note) occurs or any default occurs under the Note Documents (it being expressly understood and agreed by Pledgor that any such default under the Note Documents shall, without any notice or opportunity to cure other than as expressly set forth in the such Note Document, constitute an Event of Default hereunder even if (i) such particular default is not otherwise enumerated hereunder or (ii) Pledgor would otherwise be entitled to notice and cure under this Section 4 with respect to such default).

5. Remedies on Default. Upon the occurrence and during the continuance of an Event of Default, Secured Party may exercise any or all of the rights and remedies provided by this Pledge Agreement, and/or by any other applicable law, including without limitation (i) require Pledgor to, and Pledgor hereby agrees that it will at its expense and upon request of the Secured Party forthwith, assemble all or part of the Collateral as directed by the Secured Party and make it available to the Secured Party at a place and time to be designated by the Secured Party that is reasonably convenient to both parties, (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Secured Party's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Secured Party may deem commercially reasonable, and (iii)(A) exercise any and all rights of Pledgor to demand or otherwise require payment of any amount under, or performance of any provision of, the Receivables, the related contracts and the other Collateral, (B) withdraw, or cause or direct the withdrawal, of all funds with respect to accounts that constitute part of the Collateral and (C) exercise all other rights and remedies with respect to the Receivables, the related contracts and the other Collateral, including, without limitation, those set forth in Section 9-607 of the UCC. Without limiting the generality of the foregoing, upon the occurrence and continuance of an Event of Default, Secured Party may sell the Collateral or any part thereof, without recourse to judicial proceedings, with the right to bid for and buy, free from any right of redemption, upon ten (10) days' notice (which notice is agreed to be reasonable notice for the purposes hereof) to the Pledgor, of the time and place of sale, for cash, upon credit or for future delivery, at Secured Party's option and in Secured Party's complete discretion:

(a) at a public sale, including a sale at any broker's board or exchange;

(b) at private sale in any commercially reasonable manner which will not require the Collateral, or any part thereof, to be registered in accordance with the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder, or any other law or regulation. Secured Party is also hereby authorized, but not obligated, to take such actions, give such notices, obtain such consents, and do such other things as it may deem required or appropriate in the event of sale or disposition of any of the Collateral.

Pledgor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to the Pledgor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Secured Party shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

6. Taxes. Pledgor shall pay promptly, when due, any and all property taxes, excise taxes (however called) and other taxes, assessments, duties and other charges, which, if unpaid, might by law or otherwise become a lien or charge upon the Collateral (including any and all interest, penalties and related provisional fees) imposed, levied or assessed against the Collateral, or upon or measured by the use, ownership, possession or operation thereof, or in respect to this Pledge Agreement or the security interest in the Collateral granted and conveyed herein.

7. Pledgor's Failure to Pay Taxes and Other Items. If Pledgor fails to make any payment or do any act required of it under this Pledge Agreement, then Secured Party shall have the right, but not the obligation, upon three (3) days' written notice to Pledgor, and without releasing Pledgor from any obligation under this Pledge Agreement, to make or do the same, and to pay, purchase, contest or compromise any lien which in Secured Party's judgment places its security interest in the Collateral or Pledgor's title to the Collateral in jeopardy, and in exercising any such rights, to expend whatever reasonable amounts Secured Party in its sole discretion may deem necessary therefor. Any amounts expended by Secured Party pursuant to this Section 7 shall be a demand obligation owing by Pledgor, which shall bear interest from the date Secured Party expends such amount until repaid at the Default Rate.

8. Further Assurances. Pledgor agrees that from time to time, at the expense of Pledgor, Pledgor will promptly execute and deliver, or otherwise authenticate, all further instruments and documents, and take all further action that may be necessary, or that the Secured Party may reasonably request, in order to perfect and protect any pledge or security interest granted or purported to be granted by Pledgor hereunder or to enable the Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Pledgor will promptly with respect to Collateral: (i) authorize the Secured Party to file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Secured Party may reasonably request, in order to perfect and preserve the security interest granted or purported to be granted by Pledgor hereunder; and (ii) deliver to the Secured Party evidence that all other actions that the Secured Party may deem reasonably necessary in order to perfect and protect the security interest granted or purported to be granted by Pledgor under this Agreement have been taken.

9. Indemnification. Pledgor agrees to indemnify Secured Party and each Buyer of, for, from and against all losses, claims, demands and liabilities of every kind and nature arising by reason of the assignment and security interest granted in the Collateral, excluding any of the same arising from the negligence or willful misconduct of Secured Party, and agrees to pay all expenses, including, without limitation, expert witness fees and attorney's fees, incurred by Secured Party or any Buyer in the preservation, realization, enforcement or exercise of any of its rights, powers or remedies hereunder.

10. Attorney-in-Fact. Pledgor hereby appoints Secured Party as Pledgor's Attorney-in-Fact (without imposing any obligations on Secured Party), to perform all acts which Secured Party deems appropriate to perfect and continue the security interest granted hereunder (the "Power of Attorney"). The Power of Attorney granted herein is coupled with an interest and is irrevocable until this Pledge Agreement shall be terminated by Secured Party.

11. Miscellaneous.

(a) This Pledge Agreement and all Note Documents constitute the entire agreement among the parties hereto with respect to the subject matter hereof and shall supersede all other prior agreements, written or oral, with respect thereto.

(b) This Pledge Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Pledgor shall not have the right to assign or transfer respective rights or obligations under this Pledge Agreement except with the prior written consent of Secured Party. Secured Party, at any time, may sell, assign, grant or otherwise transfer, in whole or in part, the indebtedness secured hereby and Secured Party's rights, interest and obligations under this Pledge Agreement or the Collateral and in such event, the transferee shall have the same rights, powers and authority with respect to this Pledge Agreement and the Collateral so transferred as are hereby given to Secured Party.

(c) This Pledge Agreement may be amended, modified, renewed or extended, but only by a written instrument, executed by each of the parties hereto and the Required Holders (as defined in the Securities Purchase Agreement) in the manner of the execution of this Pledge Agreement.

(d) This Pledge Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Pledge 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 Pledgor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in 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. 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 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 the Secured Party or any Holder from bringing suit or taking other legal action against the Pledgor in any other jurisdiction to collect on the Pledgor's obligations to the Secured Party or to any 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 the Secured Party or any Holder. **THE PLEDGOR 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 PLEDGE AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(e) All parties hereto shall, from time to time, do and perform such other and further acts and execute and deliver any and all such other and further instruments as may be required or reasonably requested by any other party to establish, maintain and protect the respective rights and remedies of such other party and to carry out and effect the intents and purposes of this Pledge Agreement.

(f) All documents, agreements, certificates and instruments herein required shall be in form and substance satisfactory in all respects to Secured Party in its sole discretion and shall be provided at the sole cost and expense of Pledgor.

(g) The representations and warranties hereunder shall survive the execution hereof and Secured Party may enforce such representations and warranties at any time. Pledgor's covenants shall survive the execution hereof and shall be performed fully and faithfully by Pledgor at all times. The indemnities of Pledgor shall survive repayment of the indebtedness secured hereby.

(h) If any term or provision of this Pledge Agreement, or the application thereof to any circumstance, shall be invalid, illegal or unenforceable to any extent, such term or provision shall not invalidate or render unenforceable any other term or provision of this Pledge Agreement, or the application of such term or provision to any other circumstance. To the extent permitted by law, the parties hereto hereby waive any provision of law that renders any term or provision hereof invalid or unenforceable in any respect.

(i) Time is of the essence of this Pledge Agreement.

12. Notices. Except as otherwise specified herein, all notices hereunder shall be in writing and shall be given in accordance with Section 9.5 of the Loan Agreement to the relevant party at its address set forth below (or, if no such address is set forth below, at the address of the Debtor as shown on the records of Secured Party), or such other address as such party may hereafter specify by notice to the other given by courier, by United States certified or registered mail or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

to the Pledgor at:

Pelthos Therapeutics Inc.
4020 Stirrup Creek Drive, Suite 110
Durham, NC 27703
Attn: Scott M. Plesha

to Secured Party at:

Ligand Pharmaceuticals Incorporated
555 Heritage Drive, Suite 200
Jupiter, FL 33458
Attn: Richard Baxter

and

Ligand Pharmaceuticals Incorporated
3911 Sorrento Valley Blvd., Suite 110
San Diego, CA 92121
Attn: Chief Legal Officer

13. Recitals. The Recitals are hereby incorporated by this reference, and are deemed to be a part of this Pledge Agreement.
14. Counterparts. This Pledge Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.
15. Headings. The headings of the sections and paragraphs of this Pledge Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.
16. Construction. All references to the singular shall include the plural and vice versa and all references to the masculine shall include the neuter or feminine and vice versa. This Pledge Agreement has been reviewed and negotiated by counsel for each party and no ambiguity in this Pledge Agreement shall be construed against any party based upon its having prepared the same.
17. Termination. This Pledge Agreement shall terminate upon full, final and indefeasible satisfaction of the indebtedness hereby secured, and, upon such termination, Secured Party shall return to Pledgor any of the Collateral held by Secured Party pursuant to this Pledge Agreement, and the original executed copy of this Pledge Agreement which contains an irrevocable proxy.
18. Acknowledgment. Pledgor acknowledges that Secured Party would not agree to execute the Note Documents without the execution, delivery and performance of this Pledge Agreement by Pledgor. Pledgor further acknowledges that it has received good and sufficient consideration for the execution, delivery and performance of this Pledge Agreement.
19. No Duty to Protect. This is a pledge and assignment of Pledgor's rights and benefits in the Collateral without an assumption by Secured Party of any of Pledgor's duties or obligations attendant thereto. Secured Party shall have no duty to protect, insure, collect or realize upon the Collateral or any proceeds therefrom nor shall Secured Party have any obligations to any third party by virtue of Secured Party's possession of the Collateral.

[SIGNATURES ON FOLLOWING PAGES]

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

PLEDGOR:

PELTHOS THERAPEUTICS INC.,
a Nevada corporation

By: /s/ Francis P. Knuettel II

Name: Francis P. Knuettel II

Title: CFO

Signature Page to Pledge Agreement

SECURED PARTY:

LIGAND PHARMACEUTICALS INCORPORATED
a Delaware corporation

By: /s/ Richard Baxter

Name: Richard Baxter

Title: Senior Vice President, Investment Operations

Signature Page to Pledge Agreement

REGISTRATION RIGHTS AGREEMENT

This **REGISTRATION RIGHTS AGREEMENT** (this “**Agreement**”), dated as of November 6, 2025, 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. In connection with the Securities Purchase Agreement by and among the parties hereto, dated as of November 6, 2025 (the “**Securities Purchase Agreement**”), the Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, to issue and sell to each Buyer the Notes (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 Notes.

B. 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 and (B) 2nd 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) 90th calendar day following the date on which the Company was required to file such additional Registration Statement and (B) 2nd 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 60th calendar day after the Closing Date 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 the terms of this Agreement.

(f) **“Investor”** means a Buyer or any transferee or assignee of any Registrable Securities or Notes, as applicable, 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 or Notes, as applicable, 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, and (ii) any capital stock of the Company issued or issuable with respect to the Conversion Shares or the Notes, 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 Notes) are converted or exchanged and shares of capital stock of a Successor Entity (as defined in the Notes) into which the shares of Common Stock are converted or exchanged, in each case, without regard to any limitations on conversion of the Notes.

(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 100% of the maximum number of Conversion Shares issuable upon conversion of the Notes (assuming for purposes hereof that (x) the Notes are convertible at the initial Conversion Price (as defined in the Notes), (y) interest on the Notes shall accrue through the second (2nd) anniversary of the Closing Date and will be converted into shares of Common Stock at a conversion price equal to the Conversion Price (as defined in the Notes) assuming an Interest Date (as defined in the Note) as of the date hereof and (z) any such conversion shall not take into account any limitations on the conversion of the Notes set forth in the Notes), all 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) Legal Counsels. Subject to Section 5 hereof, Kelley Drye & Warren LLP, counsel to [BUYER] (as defined in the Securities Purchase Agreement), and Latham & Watkins LLP, counsel to Ligand (as defined in the Securities Purchase Agreement) (collectively, the “**Legal Counsels**”) may review any registration, solely on behalf of their respective clients, pursuant to this Section 2.

(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 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.

(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 Trading 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 fifteen (15) days after the necessity therefor arises (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 Notes (and such calculation shall assume (A) that the Notes are then convertible in full into shares of Common Stock at the then prevailing Conversion Rate (as defined in the Notes) and (B) the initial outstanding principal amount of the Notes remains outstanding through the scheduled Maturity Date (as defined in the Notes) and no redemptions of the Notes occur prior to the scheduled Maturity Date.

(e) Effect of Failure to File and Obtain and Maintain Effectiveness of any Registration Statement. If (i) a Registration Statement covering the resale of all of the Registrable Securities required to be covered thereby (disregarding any reduction pursuant to Section 2(f)) and required to be filed by the Company pursuant to this Agreement is (A) not filed with the SEC on or before the Filing Deadline for such Registration Statement (a **"Filing Failure"**) (it being understood that if the Company files a Registration Statement without affording each Investor and the Legal Counsels the opportunity to review and comment on the same as required by Section 3(c) hereof, the Company shall be deemed to not have satisfied this clause (i)(A) and such event shall be deemed to be a Filing Failure) or (B) not declared effective by the SEC on or before the Effectiveness Deadline for such Registration Statement (an **"Effectiveness Failure"**) (it being understood that if on the Business Day immediately following the Effective Date for such Registration Statement the Company shall not have filed a "final" prospectus for such Registration Statement with the SEC under Rule 424(b) in accordance with Section 3(b) (whether or not such a prospectus is technically required by such rule), the Company shall be deemed to not have satisfied this clause (i)(B) and such event shall be deemed to be an Effectiveness Failure), (ii) other than during an Allowable Grace Period (as defined below), on any day after the Effective Date of a Registration Statement sales of all of the Registrable Securities required to be included on such Registration Statement (disregarding any reduction pursuant to Section 2(f)) cannot be made pursuant to such Registration Statement (including, without limitation, because of a failure to keep such Registration Statement effective, a failure to disclose such information as is necessary for sales to be made pursuant to such Registration Statement, a suspension or delisting of (or a failure to timely list) the shares of Common Stock on the Principal Market (as defined in the Securities Purchase Agreement) or any other limitations imposed by the Principal Market, or a failure to register a sufficient number of shares of Common Stock or by reason of a stop order) or the prospectus contained therein is not available for use for any reason (a **"Maintenance Failure"**), or (iii) if a Registration Statement is not effective for any reason or the prospectus contained therein is not available for use for any reason, and either (x) the Company fails for any reason to satisfy the requirements of Rule 144(c)(1), including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c) or (y) the Company has ever been an issuer described in Rule 144(i)(1)(i) or becomes such an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a **"Current Public Information Failure"**) as a result of which any of the Investors are unable to sell Registrable Securities without restriction under Rule 144 (including, without limitation, volume restrictions), then, as partial relief for the damages to any holder by reason of any such delay in, or reduction of, its ability to sell the underlying shares of Common Stock (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance), the Company shall pay to each holder of Registrable Securities relating to such Registration Statement an amount in cash equal to one percent (1%) of such Investor's original principal amount stated in such Investor's Note on the Closing Date (1) on the date of such Filing Failure, Effectiveness Failure, Maintenance Failure or Current Public Information Failure, as applicable, and (2) on every thirty (30) day anniversary of (I) a Filing Failure until such Filing Failure is cured; (II) an Effectiveness Failure until such Effectiveness Failure is cured; (III) a Maintenance Failure until such Maintenance Failure is cured; and (IV) a Current Public Information Failure until the earlier of (i) the date such Current Public Information Failure is cured and (ii) such time that such public information is no longer required pursuant to Rule 144 (in each case, pro-rated for periods totaling less than thirty (30) days). The payments to which a holder of Registrable Securities shall be entitled pursuant to this Section 2(e) are referred to herein as **"Registration Delay Payments."** Following the initial Registration Delay Payment for any particular event or failure (which shall be paid on the date of such event or failure, as set forth above), without limiting the foregoing, if an event or failure giving rise to the Registration Delay Payments is cured prior to any thirty (30) day anniversary of such event or failure, then such Registration Delay Payment shall be made on the third (3rd) Business Day after such cure. In the event the Company fails to make Registration Delay Payments in a timely manner in accordance with the foregoing, such Registration Delay Payments shall bear interest at the rate of two percent (2%) per month (prorated for partial months) until paid in full. Notwithstanding the foregoing, no Registration Delay Payments shall be owed to an Investor (other than with respect to a Maintenance Failure resulting from a suspension or delisting of (or a failure to timely list) the shares of Common Stock on the Principal Market) with respect to any period during which all of such Investor's Registrable Securities may be sold by such Investor without restriction under Rule 144 (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).

(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 at 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 Registrable 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 (5th) 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 (as defined below), 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. Except for such securities as set forth on Schedule 2(i), 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; provided, that, in the event of any reduction in the aggregate number of securities included on the applicable Registration Statement required by the SEC (or as necessary to prevent one or more Investors being deemed an underwriter under such applicable Registration Statement), the aggregate number of securities as set forth on Schedule 2(i) shall be reduced on such Registration Statement, in full, prior to any reduction of any of the Registrable Securities included in such Registration Statement. Until the Applicable Date (as defined in the Securities Purchase Agreement), the Company shall not enter into any agreement providing any registration rights to any of its security holders, except as otherwise permitted under the Securities Purchase Agreement (it being understood and agreed that nothing in this Section 2(i) shall limit the Company from filing a registration statement or an offering statement under the 1933 Act as permitted under the Securities Purchase Agreement).

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 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 Allowable Grace Periods, 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 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 or (iii) the fifth (5th) 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. The Company shall submit to the SEC, within one (1) Business Day after the later of the date that (i) the Company learns that no review of a particular Registration Statement will be made by the Staff or that the Staff has no further comments on a particular Registration Statement (as the case may be) and (ii) the consent of the Investors is obtained pursuant to Section 3(c) (which consent shall be immediately sought), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than twenty-four (24) hours after the submission of such request. The Company shall respond in writing to comments made by the SEC in respect of a Registration Statement as soon as practicable, but in no event later than fifteen (15) days after the receipt of comments by or notice from the SEC that an amendment is required in order for a Registration Statement to be declared effective.

(b) Subject to Section 3(r) 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 reasonable best 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 Securities 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) Trading Days after the Investors have been so furnished copies of a Registration Statement or one (1) Trading 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 Legal Counsels and legal counsel for each other Investor, 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 (and their Legal Counsels and legal counsel for each other Investor) 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, one (1) 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 (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by a Registration Statement under such other securities or “blue sky” laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions, such amendments (including, without limitation, post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify the Legal Counsels, legal counsel for each other Investor and each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or “blue sky” laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(f) The Company shall notify the Legal Counsels, legal counsel for each other Investor and each Investor 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), and, subject to Section 3(r), promptly prepare a supplement or amendment to such Registration Statement and such prospectus contained therein to correct such untrue statement or omission and deliver one (1) copy of such supplement or amendment to the Legal Counsels, legal counsel for each other Investor and each Investor (or such other number of copies as the Legal Counsels, legal counsel for each other Investor or such Investor may reasonably request). The Company shall also promptly notify the Legal Counsels, legal counsel for each other Investor and 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 the Legal Counsels, legal counsel for each other Investor and 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 appropriate; 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 (it being understood and agreed that the Company's response to any such comments shall be delivered to the SEC no later than fifteen (15) Business Days after the receipt thereof).

(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 the Legal Counsels, legal counsel for each other Investor and 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 (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Investors, and (ii) an opinion, dated as of such date, of counsel 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 disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (2) 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 (3) 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 either 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, (ii) secure designation and quotation of all of the Registrable Securities covered by each Registration Statement on an Eligible Market (as defined in the Notes), or (iii) if, despite the Company’s best efforts to satisfy the preceding clauses (i) or (ii) the Company is unsuccessful in satisfying the preceding clauses (i) or (ii), without limiting the generality of the foregoing, to use its 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(r) 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 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 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 best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(q) Within two (2) Business Days after a Registration Statement which covers Registrable Securities is declared effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC in the form attached hereto as **Exhibit A**.

(r) Notwithstanding anything to the contrary herein (but subject to the last sentence of this Section 3(r)), at any time after the Effective Date of a particular Registration Statement, the Company may delay the disclosure of material, non-public information concerning the Company or any of its Subsidiaries the disclosure of which at the time is not, in the good faith opinion of the board of directors of the Company, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a “**Grace Period**”), provided that the Company shall promptly notify the Investors in writing of the (i) existence of material, non-public information giving rise to a Grace Period (provided that in each such notice the Company shall not disclose the content of such material, non-public information to any of the Investors) and the date on which such Grace Period will begin and (ii) date on which such Grace Period ends, provided further that (I) no Grace Period shall exceed ten (10) consecutive days and during any three hundred sixty five (365) day period all such Grace Periods shall not exceed an aggregate of thirty (30) days, (II) the first day of any Grace Period must be at least five (5) Trading Days after the last day of any prior Grace Period and (III) no Grace Period may exist during the sixty (60) Trading Day period immediately following the Effective Date of such Registration Statement (provided that such sixty (60) Trading Day period shall be extended by the number of Trading Days during such period and any extension thereof contemplated by this proviso during which such Registration Statement is not effective or the prospectus contained therein is not available for use) (each, an “**Allowable Grace Period**”). For purposes of determining the length of a Grace Period above, such Grace Period shall begin on and include the date the Investors receive the notice referred to in clause (i) above and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) above and the date referred to in such notice. The provisions of Section 3(g) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of each Grace Period, the Company shall again be bound by the first sentence of Section 3(f) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary contained in this Section 3(r), the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which such Investor 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 such Investor’s receipt of the notice of a Grace Period and for which the Investor has not yet settled.

(s) The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by each Investors of its Registrable Securities pursuant to each Registration Statement.

(t) Neither the Company nor any Subsidiary or affiliate thereof shall identify any Investor as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market and any Buyer being deemed an underwriter by the SEC shall not relieve the Company of any obligations it has under this Agreement or any other Transaction Document (as defined in the Securities Purchase Agreement); provided, however, that the foregoing shall not prohibit the Company from including the disclosure found in the “Plan of Distribution” section attached hereto as Exhibit B in the Registration Statement.

(u) 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 C** (a “**Selling Shareholder Questionnaire**”). Each Investor agrees to furnish to the Company a completed Selling Shareholder Questionnaire by the end of the tenth (10th) 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.

(c) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of Section 3(f), such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor’s receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(g) or the first sentence of Section 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary in this Section 4(c), the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which such Investor has entered into a contract for sale prior to the Investor’s receipt of a notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of Section 3(f) and for which such Investor has not yet settled.

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 the Legal Counsels 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 \$10,000 per Legal Counsel for each such registration, filing or qualification.

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, stockholders, 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, stockholders, 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 **"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 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 preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final 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 or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, **"Violations"**). Subject to Section 6(c), the Company shall reimburse the 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 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 Indemnified Person for such 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 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, an “**Indemnified Party**”), 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 an Indemnified Party any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such Claim; provided, however, the indemnity 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 Indemnified Party 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 an Indemnified Person or Indemnified Party (as the case may be) 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 or Indemnified Party (as the case may be) 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 or the Indemnified Party (as the case may be); provided, however, an Indemnified Person or Indemnified Party (as the case may be) 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 or Indemnified Party (as the case may be) in any such Claim; or (iii) the named parties to any such Claim (including, without limitation, any impleaded parties) include both such Indemnified Person or Indemnified Party (as the case may be) and the indemnifying party, and such Indemnified Person or such Indemnified Party (as the case may be) 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 or such Indemnified Party and the indemnifying party (in which case, if such Indemnified Person or such Indemnified Party (as the case may be) 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 or Indemnified Party (as the case may be). The Indemnified Party or Indemnified Person (as the case may be) 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 Party or Indemnified Person (as the case may be) which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person (as the case may be) 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 Party or Indemnified Person (as the case may be), 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 Party or Indemnified Person (as the case may be) 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 Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person (as the case may be) 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 or Indemnified Party (as the case may be) 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 indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or 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.

All or any portion of the rights under this Agreement shall be automatically assignable by each Investor to any transferee or assignee (as the case may be) of all or any portion of such Investor's Registrable Securities or Notes if: (i) such Investor agrees in writing with such transferee or assignee (as the case may be) to assign all or any portion of such rights and related obligations under this Agreement, and the transferee or assignee agrees in writing with such Investor to assume such obligations, and copies of such agreements are 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 (a) the name and address of such transferee or assignee (as the case may be), and (b) the securities with respect to which such registration rights are being transferred or assigned (as the case may be); (iii) 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; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence such transferee or assignee (as the case may be) agrees in writing with the Company to be bound by all of the provisions contained herein; (v) such transfer or assignment (as the case may be) shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement and the Notes (as the case may be); and (vi) such transfer or assignment (as the case may be) shall have been conducted in accordance with all applicable federal and state securities laws.

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 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.
4020 Stirrup Creek Drive
Suite 110
Durham, NC27703
Telephone:
Attention: Scott M. Plesha, Chief Executive Officer
E-Mail:

With a copy (for informational purposes only) to:

Sullivan & Worcester LLP
1251 Avenue of the Americas
New York, NY 10020
Telephone:
Attention: David Danovitch, Esq.
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 the Legal Counsels:

Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Telephone:
Facsimile:
Attention: Michael A. Adelstein, Esq.
E-Mail:

and

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Telephone:
Attention: Peter Handrinos; Leah Sauter
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 mailing 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, provided that Kelley Drye & Warren LLP and Morgan, Lewis & Bockius LLP shall only be provided copies of notices sent to their clients as specified on the Schedule of Buyers attached to the Securities Purchase Agreement and Latham & Watkins 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 a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail 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 provision of law 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 Notes then held by the Investors have been converted for Registrable Securities without regard to any limitations on redemption, amortization and/or conversion of the Notes then held by Investors.

(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 the 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:

PELTOS THERAPEUTICS INC.

By: /s/ Francis P. Knuettel II
Name: Francis P. Knuettel II
Title: CFO

**FORM OF NOTICE OF EFFECTIVENESS
OF REGISTRATION STATEMENT**

Attention: _____

Re: Pelthos Therapeutics Inc.

Ladies and Gentlemen:

[We are][I am] counsel to Pelthos Therapeutics, Inc., a Nevada corporation (the “**Company**”), and have represented the Company in connection with that certain Securities Purchase Agreement (the “**Securities Purchase Agreement**”) entered into by and among the Company and the buyers named therein (collectively, the “**Holders**”) pursuant to which the Company issued to the Holders senior secured convertible notes (the “**Notes**”) convertible into the Company’s shares of common stock, \$0.0001 par value per share (the “**Common Stock**”). Pursuant to the Securities Purchase Agreement, the Company also has entered into a Registration Rights Agreement with the Holders (the “**Registration Rights Agreement**”) pursuant to which the Company agreed, among other things, to register the Registrable Securities (as defined in the Registration Rights Agreement), including the shares of Common Stock issuable upon conversion of the Notes under the Securities Act of 1933, as amended (the “**1933 Act**”). In connection with the Company’s obligations under the Registration Rights Agreement, on _____, 20__, the Company filed a Registration Statement on Form [S-1][S-3] (File No. 333-_____) (the “**Registration Statement**”) with the Securities and Exchange Commission (the “**SEC**”) relating to the Registrable Securities which names each of the Holders as a selling stockholder thereunder.

In connection with the foregoing, [we][I] advise you that [a member of the SEC’s staff has advised [us][me] by telephone that [the SEC has entered an order declaring the Registration Statement effective under the 1933 Act at [ENTER TIME OF EFFECTIVENESS] on [ENTER DATE OF EFFECTIVENESS]] [an order declaring the Registration Statement effective under the 1933 Act at [ENTER TIME OF EFFECTIVENESS] on [ENTER DATE OF EFFECTIVENESS]] has been posted on the web site of the SEC at www.sec.gov] and [we][I] have no knowledge, after a review of information posted on the website of the SEC at <http://www.sec.gov/litigation/stoporders.shtml>, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC and the Registrable Securities are available for resale under the 1933 Act pursuant to the Registration Statement.

This letter shall serve as our standing opinion to you that the shares of Common Stock underlying the Notes are freely transferable by the Holders pursuant to the Registration Statement. You need not require further letters from us to effect any future legend-free issuance or reissuance of such shares of Common Stock to the Holders as contemplated by the Company’s Irrevocable Transfer Agent Instructions dated _____, 20__.

Very truly yours,

[ISSUER’S COUNSEL]

By: _____

CC:

SELLING STOCKHOLDERS

The shares of common stock being offered by the selling stockholders are those issuable to the selling stockholders upon conversion of the notes. For additional information regarding the issuance of the notes, see “Private Placement of Notes” 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 notes 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 and notes, as of _____, 20__, assuming conversion of the notes held by each such selling stockholder on that date but taking account of any limitations on conversion 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 in account any limitations on conversion of the notes set forth therein.

In accordance with the terms of a registration rights agreement with the holders of the notes, this prospectus generally covers the resale of 100% of the maximum number of shares of common stock issued or issuable pursuant to the Notes, including payment of interest on the notes through [DATE], determined as if the outstanding notes (including interest on the notes through [DATE]) 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. Because the conversion price of the notes 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 notes, a selling stockholder may not convert the notes 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]% of the outstanding shares of the Company or [49.9]% if such selling stockholder is Ligand Pharmaceuticals Incorporated. 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.”

<u>Name of Selling Stockholder</u>	<u>Number of Shares of Common Stock Owned Prior to Offering</u>	<u>Maximum Number of Shares of Common Stock to be Sold Pursuant to this Prospectus</u>	<u>Number of Shares of Common Stock of Owned After Offering</u>
(1)			
(2)			
(3)			
(4)			

(1) []

(2) []

(3) []

(4) []

PLAN OF DISTRIBUTION

We are registering the shares of common stock issuable upon conversion of the notes to permit the resale of these shares of common stock by the holders of the notes 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. 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 notes 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.

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 November 6, 2025, 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 November 6, 2025, 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.**

[•]

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 Owned¹

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”:

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 ownership¹ 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 <u>Actual Beneficial Owner</u>	Relationship of <u>Such Person to You</u>	Number of Shares <u>Beneficially Owned</u>
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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 <u>Beneficial Owner</u>	Relationship of <u>Such Person to You</u>	Number of Shares <u>Beneficially Owned</u>
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Item 2. Major Shareholders. Please state below the names of persons or groups known by you to own beneficially¹ 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 associates², or any member of your immediate family³ had or will have any direct or indirect material interest in any transactions⁴ 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.

Date: _____, 2025

Name of Investor: _____

Signature: _____

Print Name: _____

Title (if applicable): _____

Address: _____

Street

Street

Street 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.
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FORM OF AMENDED AND RESTATED LOCK-UP AGREEMENT

November 6, 2025

Pelthos Therapeutics Inc.
 4020 Stirrup Creek Drive, Suite 110
 Durham, NC 27703

Ladies and Gentlemen:

The undersigned signatory of this Amended and Restated Lock-Up agreement (this “**Amended and Restated Lock-Up Agreement**”) (1) entered into a Securities Purchase Agreement (the “**SPA**”), dated as of April 16, 2025, as amended by that certain Amendment No. 1 to Securities Purchase Agreement, dated as of July 1, 2025, with Pelthos Therapeutics Inc. (f/k/a Channel Therapeutics Corporation), a Nevada corporation (“**PTHS**”), and LNHC, Inc., a Delaware corporation (“**LNHC**”), and (2) understands that each of PTHS, CHRO Merger Sub Inc., a Delaware corporation and a direct, wholly owned subsidiary of PTHS, LNHC and, solely for purposes of Article III thereof, Ligand Pharmaceuticals Incorporated, a Delaware corporation (“**Ligand**”), entered into an Agreement and Plan of Merger, dated as of April 16, 2025 (as the same may be amended from time to time, the “**Merger Agreement**”). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement.

In connection with the SPA, the undersigned signatory executed a Lock-Up Agreement, dated [●], 2025, which the undersigned seeks to amend and restate pursuant to the terms of this Amended and Restated Lock-Up Agreement, in order to provide terms to the undersigned identical to those included in the Form of *Lock-Up Agreement – Other Current Financing Participants* attached to the Merger Agreement as Exhibit A-3.

As a condition and inducement to each of the parties to enter into the Merger Agreement and SPA, as applicable, 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 PTHS, the undersigned will not, during the Restricted Period (as defined below):

- (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, or otherwise transfer or dispose of, directly or indirectly, any Subject Shares (as defined below), 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 Subject 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, Public Company Preferred 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 Subject Shares (other than the obligations of PTHS, LNHC and/or the combined company under the Registration Rights Agreement (as defined in the SPA)) (such foregoing restrictions set forth in clauses (i) through (iii), the “**Transfer Restrictions**”).

As used in this Amended and Restated Lock-Up Agreement:

- (i) the term “**Undersigned’s Shares**” means all shares of Public Company Common Stock or Public Company Preferred Stock acquired by, or issuable to the undersigned pursuant to the SPA;
 - (ii) the term “**Subject Shares**” means: (1) until the Effective Date (as such term is defined in the Registration Rights Agreement), all of the Undersigned’s Shares, (2) from and after the Effective Date (as such term is defined in the Registration Rights Agreement) until the date that is six (6) months after the Closing Date, 75% of the Undersigned’s Shares, (3) from and after the date that is six (6) months after the Closing Date until the end of the Restricted Period, 55% of the Undersigned’s Shares.
-

(iii) the term “**Restricted Period**” means the period commencing upon the Closing and ending on December 31, 2025; provided, however, that if at any time beginning on the date that is seven (7) months after the Closing Date, the reported last sale price of Public Company Common Stock on the NYSE American is at least 250% greater than the Purchase Price (as such term is defined in the SPA) per share for five (5) consecutive trading days, then the Restricted Period will immediately expire and all of the Undersigned’s Shares subject to the Transfer Restrictions will be automatically released from the Transfer restrictions contained in this Amended and Restated Lock-Up Agreement.

The Transfer Restrictions 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 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 PTHS; 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 sign and deliver to PTHS a lock-up agreement in the form of this Amended and Restated Lock-Up Agreement with respect to the shares of Public Company Common Stock, Public Company Preferred Stock 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 Exchange Act (a “**10b5-1 Plan**”) for the transfer of Public Company Common Stock or Public Company Preferred Stock; provided that such plan does not provide for any transfers of Public Company Common Stock or Public Company Preferred Stock 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 PTHS purchased or acquired by the undersigned on the open market, in a public offering by PTHS, or that otherwise do not involve or relate to shares of Public Company Common Stock or Public Company Preferred Stock issued pursuant to the SPA;

(d) pursuant to a bona-fide third party tender offer, merger, consolidation or other similar transaction made to all holders of PTHS’s capital stock involving a change of control of PTHS, 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 Amended and Restated Lock-Up Agreement; or

(e) pursuant to an order of a court or regulatory agency.

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 during the Restricted Period; provided 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 (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 PTHS as required by law or regulation or its internal disclosure policies in the ordinary course of business.

Any attempted transfer in violation of the Transfer Restrictions 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, and will not be recorded on the share register of PTHS. In furtherance of the foregoing, the undersigned agrees that PTHS 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 securities if such transfer would constitute a violation or breach of this Amended and Restated Lock-Up Agreement. PTHS 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 Public Company Common Stock or Public Company Preferred Stock:

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 THE COMPANY.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Amended and Restated Lock-Up Agreement. 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 if the Merger Agreement is terminated for any reason, the undersigned shall be released from all obligations under this Amended and Restated Lock-Up Agreement. The undersigned understands that PTHS is proceeding with the transactions contemplated by the Merger Agreement in reliance upon this Amended and Restated Lock-Up Agreement. Notwithstanding anything to the contrary contained herein, this letter agreement will automatically terminate and the undersigned shall be released from all obligations under this letter agreement upon the earliest to occur, if any, of (i) LNHC advising the undersigned in writing that it has determined not to proceed with the transactions contemplated by the Merger Agreement or (ii) the Merger Agreement being terminated.

Any and all remedies herein expressly conferred upon PTHS will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity, and the exercise by PTHS of any one remedy will not preclude the exercise of any other remedy. The undersigned agrees that irreparable damage could occur to PTHS in the event that any provisions of this Amended and Restated Lock-Up Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that PTHS shall be entitled to seek an injunction or injunctions to prevent breaches of this Amended and Restated Lock-Up Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which PTHS is entitled at Law or in equity, and the undersigned waives any bond, surety or other security that might be required of PTHS with respect thereto.

Upon the release of any of the Undersigned's Shares from this Amended and Restated Lock-Up Agreement, PTHS will cooperate with the undersigned to facilitate the timely removal of the restrictive legend above or the withdrawal of any stop transfer instructions.

This Amended and Restated Lock-Up Agreement and any claim, controversy or dispute arising under or related to this Amended and Restated Lock-Up Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without regard to the conflict of Laws principles thereof.

This Amended and Restated Lock-Up 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 Amended and Restated Lock-Up Agreement (in counterparts or otherwise) by PTHS and the undersigned by facsimile, electronic mail (including any electronic signature covered by the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or electronic transmission in .pdf format shall be sufficient to bind such parties to the terms and conditions of this Amended and Restated Lock-Up Agreement.

(Signature Page Follows)

Very truly yours,

Print Name of Investor: _____

Signature (for individuals):

Signature (for entities):

By: _____

Name:

Title:

Accepted and Agreed
Pelthos Therapeutics Inc.
(f/k/a Channel Therapeutics Corporation):

By:

Name: Francis P. Knuettel II

Title: Chief Financial Officer

[Signature Page to Amended and Restated Lock-Up Agreement]

AMENDMENT NO. 1 TO PURCHASE AND SALE AGREEMENT

This Amendment No. 1 to the Purchase and Sale Agreement (this “**Amendment**”) is made as of the 6th day of November, 2025 (the “**Amendment Date**”) by and between (a) Channel Pharmaceutical Corporation, a Nevada corporation (the “**Seller**”), and Pelthos Therapeutics Inc. (f/k/a Channel Therapeutics Corporation), a Nevada corporation (together with the Seller, the “**Seller Parties**”), and (b) Nomis RoyaltyVest LLC, a Delaware limited liability company, Ligand Pharmaceuticals Incorporated, a Delaware corporation, and Madison Royalty LLC, a Colorado limited liability company (each individually, a “**Purchaser**”, and collectively, the “**Purchasers**”). The Seller Parties and Purchasers are referred to collectively as the “**Parties**”.

RECITALS

WHEREAS, the Parties entered into that certain Purchase and Sale Agreement dated July 1, 2025 (the “**Agreement**”), pursuant to which the Seller sold, contributed, transferred, conveyed and granted to each Purchaser the Seller’s rights, title and interest in and to the Purchaser’s Purchased Receivables (as defined in the Agreement);

WHEREAS, the Parties have determined that it is in their mutual interests to amend the Agreement as hereinafter set forth; and

WHEREAS, in accordance with Section 10.10 of the Agreement, the terms of the Agreement may be amended by a written instrument signed by each of the Parties.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein and the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Defined Terms. Unless otherwise specified in this Amendment, all capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Agreement.

2. Amendment to the Definition of “Covered Products”. The definition of “Covered Products” in Section 1.1 is hereby amended and replaced in its entirety as follows:

“Covered Products” means any drug products related to or utilizing NaV channel based technology, and any improvements, successors, replacements or varying dosage forms of the foregoing; provided, however, that for the avoidance of doubt, the “Covered Products” do not include Zelsuvmi, Xepi or any Nitricil-based technology.

3. Effect of Amendment. Except for the matters set forth in this Amendment, all other terms of the Agreement shall remain unchanged and in full force and effect and are hereby ratified and confirmed by the Parties in all respects. This Amendment and the matters set forth herein shall be governed by the terms and conditions of the Agreement, as amended hereby, which are incorporated by reference into this Amendment. This Amendment shall be construed as one with the Agreement, and the Agreement shall, where the context requires, be read and construed throughout so as to incorporate this Amendment. If there is any conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, the terms and provisions of this Amendment shall govern.

4. References. Each reference in the Agreement to “this Agreement,” “hereof,” “herein” and “hereunder” and words of similar import referring to the Agreement shall mean and be a reference to the Agreement as amended by this Amendment.

5. Governing Law. This Amendment shall be governed by and construed in accordance with the internal substantive laws of the State of New York without reference to the rules thereof relating to conflicts of law other than Section 5-1401 of the General Obligations Law of State of New York, and the obligations, rights and remedies of the Parties hereunder shall be determined in accordance with such laws.

6. Counterparts. This Amendment is enforceable when signed by the Parties and may be signed in counterparts. Signatures sent electronically (facsimile or scanned and sent via email) shall be deemed original signatures.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly and lawfully authorized officers or legal representatives effective as of the Amendment Date.

SELLER PARTIES:
CHANNEL PHARMACEUTICAL CORPORATION, a Nevada corporation

By: /s/ Francis P. Knuettel II
Name: Francis P. Knuettel II
Title: CFO

PELTOS THERAPEUTICS INC. (F/K/A/ CHANNEL THERAPEUTICS CORPORATION), a Nevada corporation

By: /s/ Francis P. Knuettel II
Name: Francis P. Knuettel II
Title: CFO

PURCHASERS:

NOMIS ROYALTYVEST LLC, a Delaware limited liability company.

By: _____ /s/ Mark Lichtenstein
Name: Mark Lichtenstein
Title: Authorized Representative

LIGAND PHARMACEUTICALS INCORPORATED, a Delaware corporation

By:

Name: Richard Baxter

Title: Senior Vice President, Investment Operations

MADISON ROYALTY LLC, a Colorado limited liability company

By: /s/ Francis Knuettel II

Name: Francis Knuettel II

Title: Managing Member

AMENDMENT NO. 1 TO ASSIGNMENT AGREEMENT

This Amendment No. 1 to the Assignment Agreement (this “**Amendment**”) is made as of the 6th day of November, 2025 (the “**Amendment Date**”) by and between Ligand Pharmaceuticals Incorporated, a Delaware corporation (“**Assignee**”) and LNHC, Inc., a Delaware corporation (“**Assignor**”). Assignee and Assignor are referred to collectively as the “**Parties**”.

RECITALS

WHEREAS, Assignor and Assignee entered into that certain Assignment Agreement dated March 24, 2025 (the “**Agreement**”), pursuant to which Assignor irrevocably transferred, assigned, contributed, conveyed and delivered to Assignee the Assigned Assets (as defined in the Agreement);

WHEREAS, in connection with entry into that certain Securities Purchase Agreement by and between Pelthos Therapeutics Inc. (“**Pelthos**”), which is the parent of Assignor, and several investors (including Assignee) listed on the Schedules attached thereto (the “**Investors**”), dated as of November 6, 2025, pursuant to which Pelthos has authorized a new series of senior secured convertible notes (the “**Notes**”) for purchase by the Investors, the Parties have determined that it is in their mutual interests to amend the Agreement as hereinafter set forth;

WHEREAS, in accordance with Section 7.4 of the Agreement, the terms of the Agreement may be amended with the written consent of the Parties; and

WHEREAS the Parties desire and hereby consent to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein and the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Defined Terms. Unless otherwise specified in this Amendment, all capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Agreement.

2. Amendment to Section 1.4. Section 1.4 of the Agreement is hereby amended and replaced in its entirety as follows:

Pass-through of Payments Received Under the Sato License Agreement. Assignee shall pay Pelthos Therapeutics Inc. (“**Pelthos**”): (a) seventy-five percent (75%) of the milestone payment received by Assignee from Sato Pharmaceutical Co., Ltd (“**Sato**”) in respect of the first commercial sale of the “Licensed Product” (as defined in that certain Exclusive License and Sublicense Agreement between the Parties as of even date herewith) in Japan pursuant to Section 14.1 of the Sato License Agreement (as defined in Schedule 2 to **Exhibit A**); and (b) fifty percent (50%) of any other amounts received by Assignee from Sato under the Sato License Agreement solely in respect of the “Licensed Product” (and, for the avoidance of doubt, no other product covered by the Sato License Agreement) in the “Licensed Field” (in each case, as defined in that certain Exclusive License and Sublicense Agreement between the Parties as of even date herewith), less any out-of-pocket costs incurred by Assignee to effectuate its rights, obligations and responsibilities under the Sato License Agreement. In consideration for this payment and the payment by Assignee to Pelthos for that certain senior secured convertible note of Pelthos, dated November 6, 2025, in the aggregate principal amount of \$9.0 million, Assignor will continue to be responsible for satisfying all of its obligations under that certain (i) Quality Agreement – Nitric oxide-based investigational medicinal products, dated as of September 26th, 2019, by and between Sato and Assignor (as successor-in-interest to Novan, Inc.); (ii) Pharmacovigilance Agreement, dated as of May 31st, 2018, by and between Sato and Assignor (as successor-in-interest to Novan, Inc.); (iii) Data Transfer Agreement, dated as of February 23rd, 2023, by and between Sato and Assignor (as successor-in-interest to Novan, Inc.); (iv) Quality Agreement – SB204 for clinical trial, dated as of July 20th, 2018, by and between Sato and Assignor (as successor-in-interest to Novan, Inc.); (v) Clinical Supply Agreement – SKN15B01, dated as of March 14th, 2023, by and between Sato and Assignor (as successor-in-interest to Novan, Inc.); (vi) Clinical Supply Agreement – SKN15C01, dated as of October 17th, 2024, by and between Sato and Assignor (as successor-in-interest to Novan, Inc.); and (vii) any other agreement entered into by Sato and Assignor relating to the Sato License Agreement.

3. Effect of Amendment. Except for the matters set forth in this Amendment, all other terms of the Agreement shall remain unchanged and in full force and effect and are hereby ratified and confirmed by the Parties in all respects. This Amendment and the matters set forth herein shall be governed by the terms and conditions of the Agreement, as amended hereby, which are incorporated by reference into this Amendment. This Amendment shall be construed as one with the Agreement, and the Agreement shall, where the context requires, be read and construed throughout so as to incorporate this Amendment. If there is any conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, the terms and provisions of this Amendment shall govern.

4. References. Each reference in the Agreement to “this Agreement,” “hereof,” “herein” and “hereunder” and words of similar import referring to the Agreement shall mean and be a reference to the Agreement as amended by this Amendment.

5. Governing Law. This Amendment shall be governed by and construed in accordance with the domestic laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

6. Counterparts. This Amendment is enforceable when signed by the Parties and may be signed in counterparts. Signatures sent electronically (facsimile or scanned and sent via email) shall be deemed original signatures.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly and lawfully authorized officers or legal representatives effective as of the Amendment Date.

ASSIGNOR:

LNHC, INC.

By: /s/ Francis Knuettel II
Name: Francis Knuettel II
Title: CFO

ASSIGNEE:

LIGAND PHARMACEUTICALS INCORPORATED

By: /s/ Richard Baxter
Name: Richard Baxter
Title: Senior Vice President, Investment Operations

Certain confidential information contained in this exhibit have been omitted by means of redacting a portion of the text and replacing it with [***], pursuant to Regulation S-K Item 601(b)(10) of the Securities Act of 1933, as amended. Certain confidential information has been excluded from this exhibit because it is: (i) not material; and (ii) the registrant treats such information as private or confidential.

Execution Version

ASSET PURCHASE AGREEMENT

by and between

PELTOS THERAPEUTICS INC.

as Purchaser

and

BIOFRONTERA INC.

as Seller

Dated as of November 6, 2025

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (as may be amended, restated, supplemented or otherwise modified in accordance with Section 7.6 this “**Agreement**”), dated as of November 6, 2025 (the “**Agreement Date**”), is made and entered into by and between Pelthos Therapeutics Inc., a Nevada corporation (“**Purchaser**”), and Biofrontera Inc., a Delaware corporation (“**Seller**”). Seller and Purchaser are collectively referred to herein as the “**Parties**” and each individually as a “**Party**”. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in Article I.

RECITALS

WHEREAS, Seller is engaged in the business of researching, developing and commercializing the Product (as such business has historically been conducted and is currently conducted, the “**Business**”);

WHEREAS, concurrently with the execution of this Agreement and as a condition and inducement to Purchaser’s willingness to enter into this Agreement, Purchaser has entered into (i) that certain License and Supply Agreement with Ferrer Internacional, S.A. (“**Ferrer**”) and (ii) that certain Supply Agreement with Halo Pharma Inc., each regarding the manufacture of the Product; and

WHEREAS, Seller desires to transfer to Purchaser and Purchaser desires to acquire from Seller all of Seller’s right, title and interest in and to the Acquired Assets, free and clear of all Liens (other than Permitted Liens), and, in addition, Purchaser wishes to assume the Assumed Liabilities, in each case, on the terms and subject to the conditions set forth herein.

AGREEMENT

In consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Certain Defined Terms. For purposes of this Agreement:

“**Affiliate**” 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. As used herein, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Affiliated Group**” means an affiliated group as defined in Section 1504 of the Code (or analogous combined, consolidated or unitary group defined under state, local or foreign Law).

“**Ancillary Agreements**” means the Bill of Sale and Assignment and Assumption Agreement and any other agreement, instrument or other document required to be entered into or delivered under this Agreement.

“**Anti-Money Laundering Laws**” means any applicable anti-money laundering Laws, including those arising under the Bank Secrecy Act of 1970, as amended by the USA PATRIOT Act.

“**Authorized Generic Agreement**” means that certain Ozenoxacin Authorized Generic Distribution and Supply Agreement dated March 5, 2018 by and between Seller (as successor in interest to Biofrontera Newderm LLC, as successor in interest to Cutanea Life Sciences, Inc.) and Medimetriks.

“**Business Day**” means a day other than Saturday, Sunday or any other day on which banks located in New York, New York are required or authorized to be closed.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Consultant**” means [***].

“**Consulting Services Agreement**” means that Consulting Services Agreement, dated on or about the date hereof, by and between Purchaser and the Consultant.

“**Contracts**” means all contracts, agreements, licenses, indentures, notes, bonds, instruments, leases, mortgages, sales orders, purchase orders or other binding arrangements, whether written or oral.

“**Develop**” or “**Development**” means, with respect to the Product, those pre-clinical and clinical drug development activities that are necessary and/or useful to seek regulatory approval, including discovery, test method development, stability testing, toxicology including GLP toxicology studies, formulation, process development, manufacturing scale-up, pre-clinical and clinical-stage manufacturing, analytical method validation, manufacturing process validation, cleaning validation, post-regulatory approval changes, quality assurance/quality control, statistical analysis, report writing, pre-clinical and clinical studies, regulatory filing (e.g., IND) submissions and approvals, and any other activities related to any of the foregoing, to the extent in existence as of the Closing.

“**Disclosure Schedules**” means the Disclosure Schedule, dated as of the date hereof, delivered by Seller to Purchaser in connection with this Agreement.

“**Event**” means any event, change, development, effect, circumstance, condition, occurrence or state of facts.

“**FDA**” means the U.S. Food and Drug Administration.

“**Food, Drug and Safety Laws**” means all applicable Laws relating to the use, manufacture, fabrication, processing, testing, handling, storage, packaging, licensing, labeling, distribution, importing, exporting, marketing, advertising or sale of any food, drug, device, natural health product, dietary supplement, cosmetic, biological or other medical product or therapy used to diagnose, treat, prevent or cure any disease or condition, including the U.S. Federal Food, Drug, and Cosmetic Act, Public Health Service Act, the Federal False Claims Act, regulations of the FDA (including those governing current Good Manufacturing Practice), and all other applicable and similar health and safety Laws by any Governmental Authority.

“**Fraud**” means actual and intentional fraud under Delaware law committed by a Party with respect to the making of the representations and warranties set forth in Article III or Article IV, or any Ancillary Agreement. For the avoidance of doubt, Fraud shall not include constructive or equitable fraud.

“**Fundamental Representations**” means, collectively, the representations and warranties contained in Sections 3.1 (*Organization and Qualification; Authorization*), 3.2 (*No Violation*), 3.6 (*Assets*), Section 3.9 (*Specified Contracts*), 3.20 (*Tax Matters*), 3.21 (*No Fraudulent Conveyance*), 3.22 (*No Brokers or Finders*), 4.1 (*Organization; Authorization*), 4.2 (*No Violation*) and 4.4 (*No Brokers or Finders*).

“GAAP” means U.S. generally accepted accounting principles in effect from time to time.

“GCP” means the then-current good clinical practice standards for human clinical trials for pharmaceuticals, as set forth in the United States Food, Drug and Cosmetic Act or other applicable Law, and such standards of good clinical practice as are required by the Regulatory Authorities of other countries for which the Product is intended to be developed, to the extent such standards are not less stringent than United States GCP.

“GLP” means the then-current good laboratory practice standards promulgated or endorsed by the FDA as defined in 21 C.F.R. Part 58 or the successor thereto, or comparable regulatory standards in jurisdictions outside the United States.

“GMP” means the then-current Good Manufacturing Practice requirements as specified in 21 C.F.R. Parts 11, 210 and 211, ICH Guideline Q7A, or equivalent laws, rules, or regulations of an applicable Regulatory Authority at the time of manufacture.

“Government Bid” means any quotation, bid or proposal by Seller that, if accepted or awarded, would lead to a Government Contract.

“Government Contract” means any Contract (including prime contracts, subcontracts and teaming agreements) that (a) is between Seller, on the one hand, and a Governmental Authority, on the other hand, (b) is entered into by Seller as a subcontractor or intended subcontractor (at any tier) in connection with a Contract or the pursuit of a Contract between, or the submission or planned submission of a quotation, bid or proposal by, another Person and/or to a Governmental Authority or (c) is entered into by Seller with a subcontractor, vendor or supplier or intended subcontractor, vendor or supplier in connection with a Contract or the pursuit of a Contract or the submission or planned submission of a quotation, bid or proposal of the type described in clause (a) or (b) above and in support of Seller’s performance or intended performance thereof.

“Government Official” means, collectively, any officer or employee of a Governmental Authority, any Person acting for or on behalf of any Governmental Authority, any political party or official thereof and any candidate for political office.

“Governmental Authority” means any court, tribunal or arbitrator, or federal, national, supranational, state, provincial, municipal, local, or similar government, or governmental, regulatory or administrative authority, agency, commission, department, or instrumentality, or any other similar authority having governmental or quasi-governmental power or any other industry self-regulatory authority whether foreign or domestic.

“Health Registration” means all permits, licenses, registrations, certifications, accreditations, bonds, variances, qualifications, clearances, approvals, filings, and authorizations of Regulatory Authorities required under Food, Drug and Safety Laws for the conduct of the Business.

“Improper Payment Laws” means the United States Foreign Corrupt Practices Act of 1977, as amended, any legislation adopted in furtherance of the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Official in International Business Transactions, and any other applicable anti-bribery Law.

“IND” or “CTA” means any investigational new drug application, clinical trial application, clinical trial exemption or similar or equivalent application or submission in the U.S. and any other country for approval that allows a sponsor to conduct human clinical investigations.

“Intellectual Property” means all intellectual property rights of any kind or nature anywhere in the world, including: (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all Patents, (b) all Trademarks, all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all moral rights, copyrights and other rights in any work of authorship, compilation, derivative work or mask work and all applications, registrations, and renewals in connection therewith, (d) all trade secrets, data (including raw data, technical data, clinical trial data, and test results), databases, confidential information, ideas, research and development, apparatus, assay components, biological materials, cell lines, chemical compositions or structures, know-how, methods, formulas, compositions, manufacturing and production processes and techniques, regulatory filings, submissions, and correspondence, approvals, results, analyses, studies, designs, drawings, diagrams, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals, (e) Software, (f) all other proprietary and intellectual property rights, (g) all copies and tangible embodiments of any of the foregoing (in whatever form or medium), (h) the exclusive right to display, perform, reproduce, make, use, sell, distribute, import, export and create derivative works or improvements based on any of the foregoing and (i) all income, royalties, damages and payments related to any of the foregoing (including damages and payments for past, present or future infringements, misappropriations or other conflicts with any intellectual property), and the right to sue and recover for past, present or future infringements, misappropriations or other conflict with any intellectual property.

“Knowledge” means, whether or not capitalized, when referring to the “knowledge” of Seller, or any similar phrase or qualification based on knowledge of Seller, (a) the actual knowledge of Dr. Hermann Luebbert, PhD, E. Fred Leffler, III, Daniel Hakansson and Dr. Montserrat Foguet and (b) the knowledge that such individuals, as reasonably prudent business persons, would have obtained after making reasonable inquiries to the applicable direct reports of such person with respect to the particular matter in question.

“Law” means any foreign, federal, state or local law, statute, code, rule, regulation, Order, common law, judgment, decree or other requirement or rule of any Governmental Authority.

“Liabilities” means any debt, liability or obligation of any nature whatsoever, whether accrued or unaccrued, absolute or contingent, direct or indirect, asserted or unasserted, fixed or unfixed, known or unknown, choate or inchoate, perfected or unperfected, liquidated or unliquidated, secured or unsecured, or otherwise, whether due or to become due, whether arising out of any Contract or tort based on negligence or strict liability and whether or not the same would be required by GAAP to be stated in financial statements or disclosed in the notes thereto, and however arising.

“License Agreement” means that License and Supply Agreement by and between Seller (as successor in interest to Biofrontera Newderm LLC, as successor in interest to Cutanea Life Sciences, Inc., as successor in interest to Medimetriks Pharmaceuticals, Inc.) and Ferrer dated March 10, 2014, as amended by that certain Amendment No. 1 dated March 5, 2018.

“Liens” means all liens, security interests, mortgages, deeds of trust, preemptive rights, charges, options, rights of first refusal or other third-party claims, transfer restrictions, pledges, and encumbrances.

“Losses” means any and all Liabilities, losses, damages, judgments, awards, settlements, interest, penalties, fines, Taxes, claims, deficiencies, costs and expenses of any kind (including reasonable attorneys’ fees and expenses), but shall not include any punitive or exemplary damages (except to the extent actually awarded by a court, arbitrator or other Governmental Authority to a third party in connection with a Third Party Claim).

“Material Adverse Effect” means any Event that, individually or in combination with any other Events, is or would reasonably be expected to be materially adverse to the Business, the Acquired Assets or the Assumed Liabilities, or the condition (financial or otherwise) or results of operation of the Business, taken as a whole; provided, however, Material Adverse Effect shall not include any Event to the extent resulting from (a) any change, condition or effect in the United States or foreign economies, fiscal or monetary policy, sovereign indebtedness or securities, banking or financial markets in general or credit markets in general, including in interest rates or the availability of financing, (b) any change, condition or effect that affects the industries in which the Seller operates, (c) any change in any applicable Law or accounting rule or principle (including GAAP), any effect thereof or the enforcement, implementation or interpretation thereof, (d) any change, effect or circumstance resulting from changes in political conditions, (e) any condition caused by any act of terrorism or war (whether or not declared), military action or the escalation thereof, (f) any epidemic, pandemic or other public health emergency, (g) any natural or man-made disaster or act of God, including any inclement weather (including any hurricane, tropical storm or other tropical cyclone or disturbance), flood, fire, earthquake, tornado or riot or other civil disorder, (h) any change, effect or circumstance resulting from an action expressly required by this Agreement, (i) any change, effect or circumstance resulting from the execution or announcement of this Agreement or of the transactions contemplated by this Agreement or any Ancillary Agreement, (j) the failure of the Seller to meet any projection, forecast or estimate, including any projection of revenues or earnings for any period, or (k) any action taken at Purchaser’s written request or with Purchaser’s express written consent; provided further, that any events, developments, circumstances, conditions, occurrences, changes or effects resulting from any of the matters described in any of the foregoing clauses (a), (b), (c), (d), (e), (f) or (g) may constitute, and may be taken into account in determining whether there has been, a Material Adverse Effect to the extent that any such event, development, circumstance, condition, occurrence, change or effect has a materially disproportionate effect on the Business as compared to other similarly situated businesses.

“Medimetriks” means Medimetriks Pharmaceuticals, Inc.

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

“Patents” means all patents and pending applications for patents of the United States and all countries and jurisdictions foreign thereto and all reissues, reexamined patents, divisions, continuations, continuations-in-part, revisions, and extensions thereof, and any patents or patent application in any country that share priority with or claim priority to any of the foregoing.

“Permits” means all permits, licenses, registrations, consents, certificates, qualifications, approvals and authorizations issued by or obtained from a Governmental Authority.

“Permitted Liens” means the restrictions, limitations and other terms of the license agreements set forth in Schedule 3.7(b)(i) and Schedule 3.7(b)(ii).

“Perrigo” means Perrigo Company of South Carolina, Inc.

“Perrigo Agreement” means that certain Consent to Assignment dated July 26, 2018 by and between Ferrer, Perrigo and Medimetriks and entered in connection with the Authorized Generic Agreement.

“Person” means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated association, corporation, firm or other entity or any Governmental Authority.

“Pre-Closing Tax Period” means any Tax period ending on or before the Closing Date and the portion of any Straddle Period up to and including the Closing Date.

“Proceeding” means any suit, action, cause of action, litigation, hearing, inquiry, examination, demand, proceeding, controversy, complaint, appeal, notice of violation, citation, summons, subpoena, arbitration, mediation, dispute, claim, allegation, investigation or audit of any nature whether civil, criminal, quasi criminal, indictment, administrative, regulatory or otherwise and whether at law or in equity.

“Product” means XepiTM (ozenoxacin) cream, for topical use, and all other derivatives and modifications thereof.

“Purchaser Certificate” means a certificate in form and substance reasonably satisfactory to Seller, dated as of the Closing Date and duly executed and delivered by Purchaser, certifying that attached thereto is a true, complete and accurate copy of resolutions duly adopted by the board of directors (or comparable governing body) of Purchaser adopting and approving this Agreement and each Ancillary Agreement to which Purchaser is a party.

“Purchaser Indemnified Parties” means Purchaser and its Affiliates and each of their respective officers, directors, managers and employees.

“Regulatory Authority” means any national, supra-national, regional, state or local regulatory agency, department, bureau, commission, council or other Governmental Authority involved in granting regulatory approvals for pharmaceutical products in such country, including the FDA in the United States, and any corresponding national or regional regulatory authorities in any country that is a counterpart to the foregoing agency.

“Regulatory Materials” means all regulatory applications, submissions, notifications, communications, correspondences, registrations, approvals and other filings submitted to, received from or otherwise conducted with a Regulatory Authority in order to Develop, manufacture, commercialize or otherwise exploit the Product in a particular country or jurisdiction. Regulatory Materials also include (a) minutes of formal and material informal meetings with Regulatory Authorities regarding INDs/CTAs, marketing authorization applications, and similar filings with respect to the Product; and (b) drug master files (if applicable), INDs, marketing authorization applications, and other regulatory approvals that allow for the use of the Product in clinical trials or permit and maintain the regulatory application in good standing with the relevant Regulatory Authority.

“Related Party” means each officer or director of Seller, each family member thereof, each trust for the benefit of any of the foregoing, and each Affiliate of any of the foregoing.

“Seller Certificate” means a certificate in form and substance reasonably satisfactory to Purchaser, dated as of the Closing Date and duly executed and delivered by Seller, certifying that attached thereto is a true, complete and accurate copy of resolutions duly adopted by the board of directors of Seller adopting and approving this Agreement and each Ancillary Agreement to which Seller is a party.

“Seller Indemnified Parties” means Seller and its respective Affiliates and each of their respective officers, directors, managers and employees.

“Seller Taxes” means any Taxes (i) imposed on Seller for any Tax period, (ii) imposed with respect to the Business or the Acquired Assets for any Pre-Closing Tax Period, (iii) imposed in connection with the transactions contemplated by this Agreement or any Ancillary Agreement (including any Transfer Taxes), and (iv) imposed on Purchaser or any of its Affiliates as a transferee or successor of Seller.

“**Software**” means all websites, computer software and firmware (including source code, executable code, data, databases, user interfaces and related documentation).

“**Specified Contracts**” means the Contracts set forth on Schedule 3.9, together with all modifications and amendments thereto.

“**Straddle Period**” means any Tax period that includes, but does not end on, the Closing Date.

“**Supply Agreement**” means that Supply Agreement by and between Seller (as successor in interest to Biofrontera Newderm LLC, as successor in interest to Cutanea Life Sciences, Inc.) and Ferrer dated March 5, 2018.

“**Tax**” means (i) any and all multi-national, federal, state, local or foreign income, gross receipts, franchise, profits, estimated, alternative minimum, add-on minimum, sales, use, goods and services, transfer, registration, value added, excise, natural resources, entertainment, amusement, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, *ad valorem*, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding, composite, healthcare, escheat or unclaimed property (whether or not considered a tax under applicable Law), or other tax, assessment, duty, fee, or similar charge of any kind whatsoever, including any interest, penalties or additions to Tax, any penalties resulting from any failure to file or timely, properly or electronically file a Tax Return or pay a Tax, or additional amounts in respect of the foregoing; (ii) Liability for the payment of any amounts of the type described in clause (i) above of another Person arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included (or required to be included) in any Tax Return relating thereto); and (iii) liability for the payment of any amounts of the type described in clause (i) above of another Person as a result of any transferee or secondary liability or any liability assumed by Contract, Law or otherwise.

“**Tax Returns**” means returns, declarations, reports, notices, forms, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information, and including for the avoidance of doubt all Forms 1099, FinCEN Form 114, Form TD F 90-22.1 and any predecessor or successor forms thereto) filed or required to be filed with any Governmental Authority, or maintained by any Person, or required to be maintained by any Person, in connection with the determination, assessment or collection of any Tax of any party or the administration of any Laws, regulations or administrative requirements relating to any Tax.

“**Trademarks**” means, in the United States and all countries and jurisdictions foreign thereto, registered trademarks, registered service marks, trademark and service mark applications, unregistered trademarks and service marks, registered trade names and unregistered trade names, corporate names, fictitious names, registered trade dress and unregistered trade dress, logos, slogans, Internet domain names, rights in telephone numbers, and other indicia of source, origin, endorsement, sponsorship or certification, together with all translations, adaptations, derivations, combinations and renewals thereof.

“**U.S.**” or “**United States**” means the United States of America.

Section 1.2 Table of Definitions. The following terms have the meanings set forth in the locations in this Agreement referenced below:

Term	Location
Acquired Assets	Section 2.1
Agreement	Preamble
Agreement Date	Preamble
Assumed Liabilities	Section 2.2(a)
Bankruptcy and Equity Exception	Section 3.1(b)
Basket Amount	Section 6.5(a)
Bill of Sale and Assignment and Assumption Agreement	Section 2.5(c)
Business	Recitals
Cap	Section 6.5(b)
Closing	Section 2.4
Closing Date	Section 2.4
CMO	Section 5.3
Commercial Quantities	Section 2.3(b)
Excluded Assets	Section 2.1(b)
Excluded Liabilities	Section 2.2(b)
Ferrer	Recitals
Indemnified Party	Section 6.4
Indemnifying Party	Section 6.4
Insurance Policies	Section 3.14
Milestone Event	Section 2.3(c)
Milestone Payment	Section 2.3(c)
Parties	Preamble
Party	Preamble
Product Know-How	Section 5.2
Purchase Price	Section 2.3
Purchaser	Preamble
Purchaser Closing Deliverables	Section 2.6
Purchaser Confidential Information	Section 5.5
Restricted Period	Section 5.9(a)
Restricted Person	Section 5.9(b)
Seller	Preamble
Seller Closing Deliverables	Section 2.5
Seller Intellectual Property	Section 3.7(c)
Third Party Claim	Section 6.4(a)
Transfer Taxes	Section 5.4(a)

ARTICLE II PURCHASE AND SALE; CLOSING

Section 2.1 Acquired Assets and Excluded Assets.

(a) Acquired Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase from Seller, and Seller shall sell, convey, assign, transfer and deliver to Purchaser, all of Seller's right, title and interest in and to all of the following assets (collectively, the "**Acquired Assets**"):

(i) the Product;

(ii) all of the assets of Seller pertaining to the manufacture, sale and distribution of the Product;

(iii) all Intellectual Property of Seller relating to the Product, including, without limitation, (A) the patents and patent applications set forth on Schedule 2.1(a)(iii)(A) and (B) the trademarks and trademark applications set forth on Schedule 2.1(a)(iii)(B), including all goodwill specifically associated with the foregoing;

(iv) all preclinical data, records and reports relating to the Product;

(v) all contracts set forth on Schedule 2.1(a)(v);

(vi) other than the Authorized Generic Agreement, including the licenses and agreements therein, all of the licenses and agreements to which Seller is a party pertaining to the manufacture, sale, and distribution of the Product; and

(vii) to the extent transferable in accordance with Applicable Laws, all regulatory filings related to the Product.

To the extent any assets or property (including any Intellectual Property) owned by an Affiliate of Seller is included in the Acquired Assets (other than the Excluded Assets), Seller shall use its best efforts to cause such Affiliate to convey, assign, transfer and deliver to Purchaser, all of such Affiliate's right, title and interest in and to such asset or property, free and clear of all Liens (other than Permitted Liens), for no additional consideration.

(b) Excluded Assets. Notwithstanding anything to the contrary contained herein, Purchaser shall only acquire the Acquired Assets, and Purchaser shall not acquire any other assets of Seller not expressly identified in Section 2.1(a) (collectively, the "**Excluded Assets**").

Section 2.2 Assumed Liabilities and Excluded Liabilities

(a) Assumed Liabilities. On the terms hereof and subject to the exclusions set forth in Section 2.2(b), at the Closing, Purchaser shall assume from Seller, and shall pay, perform, and discharge any and all of the Liabilities attributable to the duties or obligations of Seller specifically associated with the Acquired Assets, solely to the extent the action(s) or omission(s) creating such Liabilities occurred on or after the Closing or such Liabilities are required to be paid, performed, or discharged on or after the Closing (collectively, the "**Assumed Liabilities**"); provided, however, Assumed Liabilities shall not include (i) any Seller Taxes and (ii) any returns, rebates, chargebacks or similar Liabilities associated with any Product made available or commercialized by Seller.

(b) Excluded Liabilities. Notwithstanding anything to the contrary contained in this Agreement or any Ancillary Agreement and regardless of whether disclosed in the Disclosure Schedules or otherwise, at the Closing, Purchaser shall not assume, and shall not be responsible to pay, perform or discharge, any Liabilities of Seller other than the Assumed Liabilities (collectively, the "**Excluded Liabilities**").

For purposes of this Section 2.2, "Seller" shall be deemed to include any predecessors to Seller and any Person with respect to which Seller is a successor-in-interest (including by operation of Law, merger, liquidation, consolidation, assignment, assumption or otherwise).

Section 2.3 Purchase Price. The aggregate purchase price for the Acquired Assets shall not exceed \$10,000,000 (the "**Purchase Price**"). Purchaser shall pay the Purchase Price to Seller as follows:

(i) At the Closing, Purchaser shall pay or cause to be paid to Seller, by wire transfer of immediately available funds, \$3,000,000 in cash, in accordance with the wire transfer instructions provided by Seller to Purchaser; provided, that such payment shall be made immediately following receipt by Purchaser of copies of the two electronic mail messages sent by Seller or its counsel for the purpose of Seller providing the notice to Perrigo and Medimetrix, and making the request to Ferrer, respectively, contemplated under Section 5.13.

(b) (i) Subject to Seller's compliance, to the reasonable satisfaction of Purchaser acting in good faith, with Section 5.1(b) and Section 5.3 through the day Commercial Quantities are achieved, (ii) the Consultant's performance of her material obligations pursuant to the Consulting Services Agreement through the earlier of (A) the day Commercial Quantities are achieved and (B) the termination or expiration of the Consulting Services Agreement, to the reasonable satisfaction of Purchaser acting in good faith, and (iii) the availability of certain commercial quantities of Product as set forth in Schedule 2.3(b) (the "**Commercial Quantities**"), Purchaser shall, subject to the terms and conditions of this Agreement, within [***] following the availability of the Commercial Quantities, pay or cause to be paid to Seller by wire transfer of immediately available funds, \$1,000,000 in cash, in accordance with the wire transfer instructions provided by Seller to Purchaser.

(c) If any event set forth in Schedule 2.3(c) (each a "**Milestone Event**") is achieved, whether by or on behalf of Purchaser or any of its Affiliates or their respective (sub)licensees or otherwise for the benefit of Purchaser or any of its Affiliates or their respective (sub)licensees, Purchaser shall, subject to the terms and conditions of this Agreement, within [***] following the achievement of each such Milestone Event, pay or cause to be paid the amount set forth in Schedule 2.3(c) under "Milestone Payment" opposite such Milestone Event (each, a "**Milestone Payment**") to Seller. Once a Milestone Payment has been paid in accordance with this Section 2.3(c), Purchaser shall have no further obligations to any Person, including Seller or any of its Affiliates, representatives or equity holders, or any of their respective Affiliates, successors or assigns, with respect to such Milestone Payment or the Milestone Event with respect to which it was made.

Section 2.4 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "**Closing**") shall take place virtually by exchange of executed documents on the date hereof (such date on which the Closing occurs is referred to herein as the "**Closing Date**"). Concurrently with the Closing, Purchaser and the Consultant shall execute and deliver the Consulting Services Agreement.

Section 2.5 Seller Closing Deliverables. At or before the Closing, Seller shall deliver or cause to be delivered to Purchaser each of the following documents and instruments (collectively, the "**Seller Closing Deliverables**"):

(a) the Seller Certificate, duly executed by Seller;

(b) all consents set forth on Schedule 2.5(b), duly executed by Seller and the counterparties set forth therein;

(c) a counterpart to the Bill of Sale and Assignment and Assumption Agreement, substantially in the form of Exhibit A (the "**Bill of Sale and Assignment and Assumption Agreement**"), duly executed by Seller;

(d) a valid IRS Form W-9, duly completed and executed by Seller; and

(e) all other instruments and documents required to be entered into or delivered by Seller pursuant to this Agreement.

Section 2.6 Purchaser Closing Deliverables. At or before the Closing, Purchaser shall deliver or cause to be delivered to Seller each of the following (collectively, the “**Purchaser Closing Deliverables**”):

- (a) the Purchaser Certificate, duly executed by Purchaser;
- (b) a counterpart to the Bill of Sale and Assignment and Assumption Agreement, duly executed by Purchaser;
- (c) \$3,000,000, in accordance with Section 2.3(i);
- (d) the Consulting Services Agreement, duly executed by Purchaser and Consultant; and
- (e) all other instruments and documents required to be entered into or delivered by Purchaser pursuant to this Agreement.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth on the Disclosure Schedules, Seller hereby represents and warrants to Purchaser as of the date hereof as set forth below.

Section 3.1 Organization and Qualification; Authorization.

(a) Seller is duly incorporated, validly existing and in good standing (except to the extent that the failure to be in good standing would not be material to Seller) under the Laws of the State of Delaware and has all requisite power and authority to own or lease its assets and properties and to carry on its business as now being conducted. Seller is duly qualified to do business as a foreign entity in each jurisdiction in which the character of the assets or properties owned or leased by it or the nature of its business make such qualification necessary, except to the extent that the failure to be so qualified would not reasonably be expected to result in a material Liability to Seller.

(b) Seller has all requisite power and authority to (i) execute, deliver and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is or will be a party and (ii) consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements to which Seller is or will be a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Seller. This Agreement has been, and the Ancillary Agreements to which Seller is or will be a party will be, duly executed and delivered by Seller and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) constitute the valid and binding obligation of Seller, enforceable against it in accordance with their respective terms, except to the extent that enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting the rights of creditors generally and general equity and equitable relief principles (the “**Bankruptcy and Equity Exception**”).

Section 3.2 No Violation. The execution, delivery and performance by Seller of this Agreement and the Ancillary Agreements to which Seller is or will be a party and the consummation of the transactions contemplated hereby and thereby will not:

- (a) violate, contravene or conflict with any provision of the charter documents, bylaws or similar organizational documents of Seller;

(b) violate, contravene or conflict with any Law or Order currently in effect applicable to Seller;

(c) Except as set forth on Schedule 3.2(c) of the Disclosure Schedules, contravene, conflict with, result in the violation or breach of any of the terms or conditions of, or constitute (with or without notice or lapse of time or both) a material default under or an event which would, or could reasonably be expected to give rise to, any right of notice, modification, acceleration, payment, suspension, withdrawal, cancellation or termination under, or in any manner release any party thereto from any obligation under, or otherwise affect any rights of Seller under, any material Contract to which Seller is a party; or

(d) grant any other Person any rights, options, assignments, transfers, licenses, or interests in or to any Seller Intellectual Property or cause (i) any Seller Intellectual Property to be abandoned, cancelled, expired, forfeited, or terminated, (ii) a loss of, or encumbrance or restriction on, any Seller Intellectual Property or (iii) the release or delivery of any Seller Intellectual Property to any other Person;

in each case, except, in the case of Section 3.2(b), Section 3.2(c) and Section 3.2(d), where such violation, contravention, conflict, breach, default or right would not reasonably be expected to result in a material Liability of Seller.

Section 3.3 Consents and Approvals. Except as set forth on Schedule 3.3 of the Disclosure Schedules, no consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or other Person is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement or any Ancillary Agreement to which Seller is or will be a party or the consummation of the transactions contemplated hereby and thereby.

Section 3.4 Inventory. Seller does not own or possess any inventory that consists of the active pharmaceutical ingredient used for process validation purposes with respect to the Product. The Acquired Assets do not include any inventory of active pharmaceutical ingredients used for process validation purposes with respect to the Product.

Section 3.5 Absence of Changes or Events. Since [***], (a) the Business has been conducted by Seller in the ordinary course of business of Seller consistent with past practice, (b) there has not been any Event that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (c) Seller has not suffered any loss, damage, destruction or other casualty affecting any material Acquired Assets, whether or not covered by insurance, and (d) Seller has not, in connection with or with respect to the Business or the Acquired Assets:

(i) sold, transferred, delivered, leased, licensed, sublicensed, mortgaged, pledged, encumbered, impaired or otherwise disposed of (in whole or in part), or created, incurred, suffered to exist, assumed or caused to be subjected to any Lien (other than Permitted Liens) on, any of the Acquired Assets, except for the sale of inventory or non-exclusive licenses of Intellectual Property, in each case, in the ordinary course of business consistent with past practice;

(ii) incurred any indebtedness, if such indebtedness would be included in the Assumed Liabilities or otherwise created, granted, assumed or suffered to be incurred any Lien (other than Permitted Liens) of any kind on any of the Acquired Assets;

- (iii) paid, discharged, satisfied, settled or otherwise compromised any Proceeding or waived, assigned or released any material rights or claims;
- (iv) except as required by GAAP, changed any accounting policies, procedures, methods or practices (including with respect to reserves, revenue recognition, inventory control, prepayment of expenses, timing for payments of accounts payable and collection of accounts receivable);
- (v) commenced any lawsuit;
- (vi) terminated, amended or failed to renew or preserve any material Permit;
- (vii) terminated, abandoned, amended, failed to renew or preserve, or permitted to lapse or enter the public domain, any Intellectual Property that is included in the Acquired Assets, except for amendments to registered or applied for Intellectual Property completed in the ordinary course of business consistent with past practice;
- (viii) permitted the lapse of any existing insurance policy;
- (ix) made any material changes in Seller's practices and policies relating to manufacturing, purchasing, inventory management, marketing, selling or pricing;
- (x) commenced any proceeding for any voluntary liquidation, dissolution, or winding up of Seller, including initiating any bankruptcy proceedings on its behalf; or
- (xi) authorized any of the foregoing or entered into or agreed to enter into an agreement to do any of the foregoing.

Section 3.6 Assets.

- (a) Seller has good and marketable legal title to all of the applicable tangible and intangible Acquired Assets, free and clear of any and all Liens (other than Permitted Liens). The Acquired Assets constitute all of the assets that are necessary to enable Purchaser to carry on the Business immediately after the Closing in substantially the same manner as has been carried on by Seller since [***]. None of the Excluded Assets are material to the Business. No Affiliate of Seller is engaged in the Business or otherwise has any right, title or interest in any of the Acquired Assets.
- (b) All material items of tangible personal property owned or leased by Seller that constitute Acquired Assets are in good operating condition and repair (other than any inventory of Seller), ordinary wear and tear excepted, and are suitable for the purposes for which they are presently being used.

Section 3.7 Intellectual Property.

- (a) Seller does not own any right, title or interest in any registered Intellectual Property (including any applications thereof) related to the Product or the Acquired Assets.
- (b) Schedule 3.7(b)(i) of the Disclosure Schedules contains a true, complete and accurate list of all Intellectual Property (whether registered or unregistered) licensed to Seller and related to the Business, as currently conducted, the Product or the Acquired Assets and any license or other agreement relating thereto (other than commercially-available off-the-shelf software that has not been customized or modified). Schedule 3.7(b)(ii) of the Disclosure Schedules contains a true, complete and accurate list of all Intellectual Property (whether registered or unregistered) licensed by Seller to any Person and related to the Business, the Product or the Acquired Assets and any license or other agreement relating thereto.

(c) Seller owns and possesses all right, title and interest in and to, or has the right under the licenses set forth on Schedule 3.7(b)(i) and Schedule 3.7(b)(ii) of the Disclosure Schedules to use and otherwise commercialize or exploit, all Intellectual Property necessary for or used or otherwise commercialized or exploited in the operation of the Business as currently conducted, including all Intellectual Property included in the Acquired Assets, free and clear of all Liens other than the restrictions, limitations and other terms of the license agreements set forth in Schedule 3.7(b)(i) and Schedule 3.7(b)(ii) (the “**Seller Intellectual Property**”). Except as set forth in Section 17.1 of the License Agreement, no Seller Intellectual Property included in the Acquired Assets is jointly owned with any other Person. Except as set forth in Schedule 3.7(c), all Seller Intellectual Property owned by or exclusively licensed to Seller is included in the Acquired Assets (it being acknowledged that Seller’s rights under the License Agreement and the Supply Agreement are exclusive only to the extent set forth in the License Agreement). To the Knowledge of Seller, (i) all registered Seller Intellectual Property are in good standing, (ii) none of the registered Seller Intellectual Property is invalid or unenforceable, and (iii) no loss or expiration of any of the registered Seller Intellectual Property is pending or threatened, except for patents expiring at the end of their statutory term. To the Knowledge of Seller, no due dates for filings or payments concerning the registered Seller Intellectual Property fall due within [***]after the anticipated Closing, whether or not such due dates are extendable.

(d) Each current and former employee, officer, consultant and contractor of Seller who is or has been involved in the creation or development (alone or with others) of any Seller Intellectual Property owned (or jointly owned) by Seller, has executed a valid and enforceable written agreement assigning to Seller ownership of all rights in such Seller Intellectual Property developed by such employee, officer, consultant and contractor in the course and scope of his or her employment or engagement by Seller. None of the equity holders of Seller owns any Seller Intellectual Property. Seller has not assigned or transferred to any other Person any right or option to sue or to recover for past, present or future infringements, misappropriations or other conflicts with respect to any Seller Intellectual Property.

(e) (i) There have been no claims or proceedings (including any interference, opposition, reissue, or reexamination proceeding) made or threatened against Seller in writing or, to the Knowledge of Seller, otherwise made or threatened against Seller asserting the invalidity, misuse or unenforceability of any Seller Intellectual Property or challenging Seller’s ownership of or exclusive license to any Seller Intellectual Property (it being acknowledged that Seller’s rights under the License Agreement and the Supply Agreement are exclusive only to the extent set forth in the License Agreement), (ii) Seller has not received any written or, to the Knowledge of Seller, other notices of any direct, vicarious, indirect, contributory or other infringement, violation or misappropriation by Seller of any Seller Intellectual Property (including any cease-and-desist letters or demands or offers to license any Seller Intellectual Property from any other Person), (iii) the conduct of the Business as previously conducted has not infringed, misappropriated or violated, and as presently conducted or presently proposed to be conducted does not and will not infringe, misappropriate or violate, any Intellectual Property of any other Person, and (iv) to the Knowledge of Seller, no Seller Intellectual Property has been infringed, misappropriated or violated by any other Person.

(f) Seller has taken all commercially reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in the owned Seller Intellectual Property.

(g) No government funding or personnel were used, directly or indirectly, to develop or create, in whole or in part, any owned Seller Intellectual Property. No Governmental Authority, university, college or other educational institution or research center has or purports to have any ownership in, or rights to, any owned Seller Intellectual Property.

Section 3.8 Contracts. True, complete and accurate copies of the Contracts set forth on Schedule 2.1(a)(v), together with all modifications and amendments thereto, have previously been delivered or made available to Purchaser. Except as set forth on Schedule 3.8 of the Disclosure Schedules, such Contracts constitute all of the Contracts to which Seller is party (a) by which any of the Acquired Assets are bound or affected or (b) specifically in connection with the Business or the Acquired Assets. Such Contracts are in full force and effect, are a binding obligation of Seller, enforceable against Seller in accordance with their terms, except to the extent that enforcement may be limited by the Bankruptcy and Equity Exception. As of the date hereof, Seller is not in material breach or default, nor has any event occurred which with the giving of notice or the passage of time or both would constitute a material breach or default by Seller of, or which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination of or by another party under, or in any manner release any party thereto from any obligation under, any such Contract and, to the Knowledge of Seller, no other party to such Contracts are in material breach or default, and no event has occurred which with the giving of notice or the passage of time or both would constitute a material breach or default by any other party, or which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination of or by Seller under, or in any manner release any party thereto from any obligation under, any such Contract. Since [***], Seller has not received any written notice, or to the Knowledge of Seller, oral communication, regarding any violation or breach of, or default under any such Contracts. Seller has not been notified in writing by any counterparty to any such Contract that such counterparty is terminating, modifying, repudiating or rescinding, or intends to terminate, modify, repudiate or rescind such Contract.

Section 3.9 Specified Contracts. True, complete and accurate copies of the Authorized Generic Agreement and that certain Consent to Assignment dated July 26, 2018, by and between Seller (as successor in interest to Biofrontera Newderm LLC, as successor in interest to Cutanea Life Sciences, Inc.) and Medimetriks have previously been delivered or made available to Purchaser. To the Knowledge of Seller, true, complete and accurate copies of the Perrigo Agreement and Assignment and Assumption Agreement, dated July 26, 2018, by and between Medimetriks and Perrigo have previously been delivered or made available to Purchaser. As of the date hereof, Seller is not in material breach or default, nor has any event occurred which with the giving of notice or the passage of time or both would constitute a breach or default by Seller of, or, to the Knowledge of Seller, except as set forth in Schedule 3.2(c), which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination of or by another party under, or in any manner release any party thereto from any obligation under, any Specified Contract and to the Knowledge of Seller, no other party to the Specified Contracts is in breach or default, and no event has occurred which with the giving of notice or the passage of time or both would constitute a material breach or default by any other party, or which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination of or by Seller under, or in any manner release any party thereto from any obligation under, any Specified Contract. There are no disputes among Seller on one hand and Ferrer, Perrigo, or Medimetriks on the other hand under any Specified Contract, and to the Knowledge of Seller, there are no disputes among any of the parties, excluding Seller, under any Specified Contract.

Section 3.10 Litigation. There are no Proceedings pending or threatened in writing against Seller or related to or affecting the Business or any of the Acquired Assets.

Section 3.11 Compliance with Laws.

(a) Seller complies, and has for the past [***] complied, in all material respects with all Laws (including any Food, Drug and Safety Laws) in connection with the ownership of the Acquired Assets and the operation of the Business, and Seller has not received during the past [***] any written notice or other communication from any Governmental Authority that Seller is not in compliance in any material respect with any Law (including any Food, Drug and Safety Laws) applicable to the Acquired Assets.

(b) All preclinical and clinical trials that have been conducted in the past [***] or are being conducted by or on behalf of Seller are being or have been conducted in compliance in all material respects with the required experimental protocols, procedures and controls pursuant to applicable Food, Drug and Safety Laws, including GMP, GCP, GLP and applicable FDA regulations for the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of clinical trials contained in Title 21 parts 50, 54, 56, 58, and 312 of the Code of Federal Regulations, any comparable foreign Laws for any of the foregoing or other Laws regulating the conduct of pre-clinical and clinical investigations.

(c) To the Knowledge of Seller, no officer, director, manager, employee, agent or any other Person acting on behalf of Seller has made an untrue statement of a material fact or a fraudulent statement to any Governmental Authority or failed to disclose a material fact required to be disclosed to any Governmental Authority, in each case related to the Business and the Acquired Assets and that would reasonably be expected to result in a material Liability to Seller pursuant to any Food, Drug and Safety Laws.

(d) Seller holds or has secured rights under all regulatory authorizations or Permits necessary to research, develop, test, manufacture, distribute, and sell the Product to the extent necessary for the lawful operation of the Business as conducted by Seller. Seller has conducted the Business in material compliance with all terms and conditions of the regulatory authorizations and Permits. No suspension, revocation or cancellation of Seller's regulatory authorizations or Permits is pending or, to the Knowledge of Seller, threatened and all such regulatory authorizations and Permits are valid and in full force and effect.

(e) During the past [***], Seller has not received and, with respect to any contract manufacturing organizations, is not aware of, either (i) any FDA Form 483 or similar notification from any Governmental Authority under any of the Food, Drug and Safety Laws with respect to the Acquired Assets or (ii) any warning letter, untitled letter, or other written communication or document from any Governmental Authority that asserts lack of compliance with any Food, Drug and Safety Laws or applicable health and safety Laws (which has not since been fully remedied). Seller has not received any written complaints or notices during the previous [***] alleging any material product quality issues related to the Product and associated with safety alerts or any recall or a request for recall of the Product, whether voluntary or the result of action by a Governmental Authority.

(f) During the past [***], none of Seller and to Seller's Knowledge, any officer, employee or agent of Seller has been convicted of any crime or engaged in any conduct on behalf of Seller 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 335a(a) or (b), or any similar law, rule or regulation of any other Governmental Authority, or (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar law, rule or regulation of any Governmental Authority.

Section 3.12 Licenses and Permits. As of immediately prior to the Closing, Seller holds all Permits necessary for the conduct, ownership, use, occupancy or operation of the Business or the Acquired Assets. Seller complies, and for the past [***] has complied, in all material respects with all such Permits, and Seller has not received during the past [***] any written notice from any Governmental Authority or any other Person that Seller is not in compliance in any material respect with any such Permit or of any actual or possible revocation, withdrawal, suspension, cancellation, termination or material modification of any such Permit. All such Permits constituting Acquired Assets (if any) are identified on Schedule 3.12 of the Disclosure Schedules, including their respective dates of issuance and expiration, and true, complete and accurate copies thereof have been provided or made available to Purchaser. All such Permits constituting Acquired Assets are, and immediately following the Closing will be, valid and in full force and effect on terms identical in all material respects to those under which, immediately before the Closing (and as of the Agreement Date), Seller holds such Permits.

Section 3.13 Related Party Transactions. No Related Party (a) has any direct or indirect interest in any Acquired Asset, Assumed Liability, or the Business, (b) has entered into, or has had any direct or indirect financial interest in, the Product or other Acquired Asset, or transaction or business dealing involving the Business, (c) is competing, directly or indirectly, with the Business, (d) is a member, manager, director, officer or employee of, or consultant to, or owns, directly or indirectly, any interest in, any vendor, supplier or customer of the Business, or (e) has any interest in or has filed any application with respect to any Intellectual Property of Seller which arises out of or relates to Seller.

Section 3.14 Suppliers. For purposes of this Agreement, “**Top Suppliers**” means the five (5) largest suppliers to Seller (excluding utilities) with respect to the Business by the aggregate dollar value of purchases by Seller during the twelve (12) month period ended December 31, 2024 (if any). During the past [***], no Top Supplier has terminated or adversely modified the amount, frequency or terms of the business such Top Supplier conducts with Seller. Seller has not received any written notice that any Top Supplier intends to terminate or materially and adversely modify the amount, frequency or terms of the business such Top Supplier conducts with Seller following the Closing.

Section 3.15 Insurance Policies. Schedule 3.15 of the Disclosure Schedules contains a true, complete and accurate list of all insurance policies maintained by Seller which provide coverage to or for the benefit of or with respect to the Business or the Acquired Assets (the “**Insurance Policies**”), indicating in each case the type of coverage, name of the insured, the insurer, the expiration date of each policy and the amount of coverage. True, complete and accurate copies of all such Insurance Policies have been provided or made available to Purchaser. Each Insurance Policy is in full force and effect and has not been subject to any lapse in coverage.

Section 3.16 Product.

(a) The Product has been, to the extent each of the following is applicable to Seller, researched, developed, manufactured, processed, tested, stored, shipped, labelled, and distributed by Seller in compliance in all material respects with all applicable Laws.

(b) During the past [***], there have been no recalls, field notifications or seizures ordered or, to the Knowledge of Seller, threatened by the FDA or any other Governmental Authority with respect to the Product, and Seller has not within the last [***], either voluntarily or at the request of any Governmental Authority, initiated or conducted a recall or market withdrawal of the Product or issued a safety alert, warning or “dear doctor” letter relating to the Product. Seller has not at any time during the preceding [***], received any written notice from the FDA or other Governmental Authority that it has commenced, or threatened to initiate, any investigation or action to withdraw approval, restrict sales or marketing or request a recall with respect to the Product, or that the FDA or such other Governmental Authority has commenced or threatened to initiate any investigation or other material enforcement action to enjoin or place restrictions on the production of the Product.

Section 3.17 Government Contracts. Seller does not have any Government Contracts that would constitute Acquired Assets nor does Seller have any Government Bids that if accepted would reasonably be expected to constitute an Acquired Asset.

Section 3.18 Anti-Money Laundering. Seller has in place, adheres to and maintains (and has had in place, adhered to and maintained) policies and procedures designed to ensure compliance in all material respects with all Anti-Money Laundering Laws and guidelines applicable to Seller, and no Proceeding by or before any Governmental Authority against or affecting any Acquired Assets with respect to any such Laws or guidelines is pending or, to the Knowledge of Seller, threatened.

Section 3.19 Anticorruption; Improper Payments. None of Seller, nor to the Knowledge of Seller, any officer, director, agent, manager or employee of Seller has for the past [***], directly or indirectly, taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of payment, directly or indirectly, of any money or anything of value (including any gift, sample, rebate, travel, meal and lodging expense, entertainment, service, equipment, debt forgiveness, donation, grant or other thing of value, however characterized) to any Government Official to secure any improper advantage or to obtain or retain business that would Seller to be in violation of Improper Payment Laws. Neither Seller nor any of its Affiliates have received any written notice or communication from any Person that alleges potential violation of any Improper Payment Laws.

Section 3.20 Tax Matters. Seller has timely and properly filed all Tax Returns required to be filed by it, taking into account any extension of time to file granted to Seller, and all such Tax Returns are true, accurate and complete in all material respects. Seller has timely and properly paid all Taxes required to be paid by Seller or with respect to the Business or the Acquired Assets, whether or not shown on any Tax Return. None of the Assumed Liabilities is any Tax allocation, Tax sharing, Tax indemnification, Tax gross-up or Tax distribution Contract or arrangement.

Section 3.21 No Fraudulent Conveyance. Seller is not entering into this Agreement and the transactions contemplated hereby with the intent to defraud, delay or hinder Seller's creditors and the consummation of the transactions contemplated by this Agreement and the transactions contemplated hereby are not reasonably expected have any such effect. The transactions contemplated hereby do not constitute a fraudulent conveyance, or otherwise give rise to any right of any creditor of Seller whatsoever to any of the Acquired Assets after the Closing.

Section 3.22 No Brokers or Finders. Except as set forth on Schedule 3.22 of the Disclosure Schedules, neither Seller nor any of its Affiliates has retained any broker or finder, or agreed to pay or made any statement or representation to any Person that would entitle such Person to any broker's, finder's or similar fees or commissions in connection with the transactions contemplated by this Agreement or any Ancillary Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as of the date hereof as set forth below.

Section 4.1 Organization; Authorization.

(a) Purchaser is duly incorporated, validly existing and in good standing (except to the extent that the failure to be in good standing would not be material to Purchaser) under the Laws of the State of Nevada and has all requisite power and authority to own or lease its assets and properties and to carry on its business as now being conducted.

(b) Purchaser has all requisite power and authority to (i) execute, deliver and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is or will be a party and (ii) consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements to which Purchaser is or will be a party, the performance by Purchaser of its obligations hereunder and thereunder and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of such Purchaser. This Agreement has been, and the Ancillary Agreements to which Purchaser is or will be a party will be, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) constitute the valid and binding obligation of Purchaser, enforceable against it in accordance with their respective terms, except to the extent that enforcement may be limited by Bankruptcy and Equity Exception.

Section 4.2 No Violation. The execution, delivery and performance by Purchaser of this Agreement and the Ancillary Agreements to which Purchaser is or will be a party and the consummation of the transactions contemplated hereby and thereby will not:

(a) violate, contravene or conflict with any provision of the charter documents, bylaws or similar organizational documents of Purchaser;

(b) violate, contravene or conflict with any Law or Order currently in effect applicable to Purchaser, except where such violation, contravention, or conflict would not reasonably be expected to result in a material Liability of Purchaser; or

(c) contravene, conflict with, result in the violation or breach of any of the terms or conditions of, or constitute (with or without notice or lapse of time or both) a material default under or an event which would, or could reasonably be expected to give rise to, any right of notice, modification, acceleration, payment, suspension, withdrawal, cancellation or termination under, or in any manner release any party thereto from any obligation under, or otherwise affect any rights of Purchaser under, any material Contract to which Purchaser is a party;

(d) in each case, except, in the case of Section 4.2(b) and Section 4.2(c), where such violation, contravention, conflict, breach, default or right would not reasonably be expected to result in a material Liability of Purchaser.

Section 4.3 Consents and Approvals. No consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or other Person is required to be made or obtained by Purchaser in connection with the execution and delivery of this Agreement or any Ancillary Agreement to which Purchaser is or will be a party or the consummation of the transactions contemplated hereby and thereby.

Section 4.4 No Brokers or Finders. Other than Roth Capital Partners, neither Purchaser nor any of its Affiliates has retained any broker or finder, or agreed to pay or made any statement or representation to any Person that would entitle such Person to any broker's, finder's or similar fees or commissions in connection with the transactions contemplated by this Agreement or any Ancillary Agreement. All commissions and fees to be paid to Roth Capital Partners in connection with the transactions contemplated by this Agreement shall be paid by Purchaser.

Section 4.5 Sufficiency of Funds. Purchaser has sufficient cash on hand or other sources of immediately available funds to enable it to pay the Purchase Price and consummate the transactions contemplated by this Agreement and the Ancillary Agreement.

Section 4.6 Solvency. Immediately after giving effect to the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, Purchaser shall be solvent and shall be able to pay its debts as they become due. No transfer of property is being made and no obligation is being incurred, in connection with the transactions contemplated by this Agreement or any Ancillary Agreement, with the intent to hinder, delay or defraud either present or future creditors of any of Purchaser or any of its Affiliates. In connection with the transactions contemplated by this Agreement or any Ancillary Agreement, Purchaser has not incurred, either directly or through any of its Affiliates, indebtedness beyond its or their ability to pay such indebtedness, in the ordinary course of business, as such indebtedness becomes absolute and matured.

Section 4.7 Litigation. There are no Proceedings pending or, to Purchaser's knowledge, threatened against Purchaser or any Affiliate of Purchaser that challenge or seek to prevent, enjoin or otherwise delay any of the transactions contemplated by this Agreement or any Ancillary Agreement.

Section 4.8 Independent Investigation. In entering into this Agreement, Purchaser has conducted to its satisfaction, an independent investigation of the Acquired Assets in making its determination to proceed with the transactions contemplated by this Agreement, and has relied solely upon its own investigation and analysis and the representations and warranties of Seller expressly contained in Article III (including the related portions of the Disclosure Schedules). Purchaser acknowledges and agrees that Seller has not made and is not making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in Article III (including the related portions of the Disclosure Schedules).

ARTICLE V COVENANTS AND AGREEMENTS

Section 5.1 Further Assurances.

(a) Each of the Parties agrees that subsequent to the Closing, upon the reasonable request of any other Party from time to time, it shall execute and deliver, or cause to be executed and delivered, such further instruments and take such other actions as may be necessary or desirable to carry out the transactions contemplated by this Agreement and the Ancillary Agreements or to vest, perfect or confirm of record or otherwise in Purchaser any and all right, title and interest in, to and under any of the Acquired Assets as a result of or in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

(b) In addition to the services described in the Consulting Services Agreement, from and after the Closing, Seller shall use commercially reasonable efforts to assist Purchaser with the launch of the Product by making its personnel, with the appropriate knowledge, experience or background, reasonably available to Purchaser, at commercially reasonable rates to be mutually agreed upon, to consult with Purchaser on an as needed basis. Such consultation shall be in addition to the technical assistance that Seller shall provide in connection with the technology transfer related to the Product set forth in Section 5.3.

Section 5.2 Regulatory. In addition to the services described in the Consulting Services Agreement, within [***] after the Closing, Seller shall (i) transfer all know-how, trade secrets, and other Intellectual Property, and all embodiments thereof, then-existing, in its possession and control, and not previously provided to Purchaser, including all data, information, results and materials within the possession or control of Seller and its Affiliates, that are necessary or reasonably useful for the Development, manufacturing, and anticipated commercialization of the Product ("**Product Know-How**") and (ii) to the extent transferable in accordance with Applicable Laws, assign and transfer to Purchaser (or its designee) all of its right, title and/or interest in the Regulatory Materials for or in respect of the Product held or filed by or on behalf of Seller or its Affiliate, along with copies of any such Regulatory Materials in Seller's possession. To the extent any Product Know-How or other Intellectual Property relating to the Product is in the possession of or under the control of a third party (e.g., Ferrer) then Seller shall (i) at Purchaser's request, expressly authorize such third party to make such Product Know-How or Intellectual Property available to Purchaser, and (ii) not take any action which would limit the right or ability of such third party to transfer or otherwise make such Product Know-How or Intellectual Property available to Purchaser. Within [***] following the Closing, Seller shall initiate all required actions to delist the Product from the industry compendia (i.e., Red Book, FDB and Gold Standard) and the National Drug Codes applicable to the Product and promptly provide Purchaser with all documentation evidencing the completion of such delistings upon receipt.

Section 5.3 Technology Transfer. From the Closing Date through the earlier of (i) [***] following the Closing Date and (ii) when full commercial and regulatory consent or approval of any regulatory supplement needed to commercialize the Product has been received from FDA, Seller shall, at any time within [***] of Purchaser's request, provide and deliver to Purchaser (and/or a third party contract manufacturer designated by Purchaser (a "CMO")) all reasonably requested assistance and support to enable Purchaser (and any CMOs) to receive and use the Product Know-How. In addition, upon request of Purchaser, from time to time after the Closing Date, on mutually agreeable timetables, Seller shall use commercially reasonable efforts to provide reasonable technical assistance to Purchaser and its Affiliates (and any CMO) with respect to Purchaser's and its Affiliate's (and any CMO's) receipt, adoption, and establishment of the manufacturing process and obtaining related regulatory approvals, consents, and/or modifications to existing Health Registrations for the manufacture of the Product by Purchaser, its Affiliates and/or any CMO. Notwithstanding anything to the contrary in this Section 5.3, Seller shall have no obligation to provide any such assistance to Purchaser described in this Section 5.3 after the date that is [***] from Purchaser's receipt of the Commercial Quantities.

Section 5.4 Tax Matters.

(a) *Transfer Taxes.* All transfer, documentary, sales, use, stamp, value added, real property transfer, goods and services, excise, registration and other similar Taxes, and all conveyance or filing fees, recording charges and other similar fees and charges (including any penalties and interest) incurred in connection with this Agreement, the Ancillary Agreements and the consummation of the transactions contemplated by this Agreement and any Ancillary Agreements ("Transfer Taxes") shall be borne and paid [***] by Seller, when due, and the Party required by Law to do so, shall, at Seller's expense, timely file all Tax Returns and other documentation with respect to all such Transfer Taxes (and the non-filing Party shall reasonably cooperate in good faith with respect thereto as necessary) and timely pay all Transfer Taxes; provided that Seller shall pay to Purchaser any portion of Transfer Taxes reflected on such returns no later than [***] after receiving notice from the Purchaser. The Parties shall cooperate in good faith to minimize or avoid any Transfer Taxes that might be imposed to the extent permitted by applicable Law.

(b) *Allocation of Tax Liability.* For all purposes under this Agreement involving the determination of Taxes (including the determination of Seller Taxes), in the case of Taxes that are payable with respect to any Straddle Period, the portion of any such Tax that is allocable to the portion of such Straddle Period ending on the close of the Closing Date shall be (i) in the case of Taxes imposed on a periodic basis with respect to any assets or otherwise measured by the level of any item (without regard for income, gross receipts, payroll, sales or use), deemed to be the amount of such Taxes for such entire Straddle Period multiplied by a fraction the numerator of which is the number of calendar days in such Straddle Period ending on the end of the Closing Date and the denominator of which is the number of calendar days in such entire Straddle Period, and (ii) in the case of income, gross receipts, payroll, sales, use and all other Taxes, deemed equal to the amount which would be payable if such taxable period ended on the end of the Closing Date.

(c) *Tax Controversies*. After the Closing, Seller, on the one hand, and Purchaser, on the other hand, (i) will promptly inform the other Party in writing of any written notice it receives of any audit, investigation, request for documents or information related to Taxes imposed with respect to the Acquired Assets that could affect the Tax liability of the other Party (ii) will each provide the other Party, at the other Party's expense, with such assistance as may reasonably be requested in connection with the preparation of any Tax Return, audit or other examination by any taxing authority or judicial or administrative Proceeding relating to liability for Taxes, (iii) will each retain and, at the other Party's expense, provide to the other Party all records and other information that may be relevant to any such Tax Return, audit or examination, Proceeding or determination and (iv) will each provide the other Party with any final determination of any such audit or examination, Proceeding or determination that affects any amount required to be shown on any Tax Return of the other Party for any period. Without limiting the generality of the foregoing, each of Seller and Purchaser will retain, until the expiration of the applicable statutes of limitation (including any extensions thereof), copies of all Tax Returns, supporting work schedules and other records relating to tax periods or portions thereof of Seller ending on or prior to the Closing Date.

Section 5.5 Confidentiality. Except as otherwise provided herein or in the Ancillary Agreements, Seller shall, and shall direct its Affiliates and its representatives to treat on and after the date hereof as strictly confidential all Purchaser Confidential Information and Seller shall not, and shall direct its Affiliates and its representatives not to, after the date hereof, use in any way, or divulge or convey to any third party, such Purchaser Confidential Information; provided, however, that Seller or its Affiliates may furnish such portion (and only such portion) of such information as Seller or such Affiliate reasonably determines it is legally obligated to disclose if: (a) it receives a request to disclose all or any part of such information under the terms of a subpoena, civil investigative demand or Order issued by a Governmental Authority or is otherwise required to disclose such information pursuant to applicable Law and (b) to the extent not inconsistent with such request, Order or applicable Law, it notifies Purchaser of the existence, terms and circumstances surrounding such request so that Purchaser may, at its sole cost and expense, take steps to resist or narrow such request. Notwithstanding anything to the contrary herein, this Section 5.5 shall not apply to (i) any use or disclosure expressly contemplated by this Agreement or any Ancillary Agreement, (ii) any Proceeding in connection with the enforcement of rights hereunder or under any Ancillary Agreement, or (iii) any use or disclosure to Seller's or any of its Affiliates' advisers (including attorneys, accountants, consultants, and financial advisors) and their respective officers, employees, directors, partners, and agents, but only to the extent that such representatives have a bona fide need to know such Purchaser Confidential Information in connection with the transactions contemplated by this Agreement and the Ancillary Agreements and are informed of the confidential nature of such Purchaser Confidential Information. For purposes of this Agreement, "**Purchaser Confidential Information**" consists of all confidential, non-public or proprietary information and data relating to the Acquired Assets and/or Assumed Liabilities (other than data or information that (A) is or becomes available to the public other than as a result of a breach of this Section 5.5 or (B) is acquired after the date of this Agreement on a non-confidential basis from a third party source that is not prohibited from disclosing such information to Seller or its Affiliates).

Section 5.6 Transfer of Files. With respect to data, records, files, manuals and other documentation that constitute Seller Intellectual Property, including: (a) source code, compilation instructions, linking information, programming notes, algorithm documentation; (b) studies, reports, correspondence and other similar documents and records, whether in electronic form or otherwise; and (c) all files, documents, correspondence, and records of attorneys or consultants of Seller (or its predecessor(s) in interest) relating to the Seller Intellectual Property, Seller shall use commercially reasonable efforts to transfer and deliver such embodiment of the Acquired Assets, in accordance with the reasonable instructions specified by Purchaser. In the event that any of the abovementioned items reside in digital or electronic format on any equipment that is not included in the Acquired Assets, then the hard drive or other medium shall be imaged and provided to Purchaser in a reasonably accessible format.

Section 5.7 Public Announcements. Except to the extent required under applicable Laws, Seller shall not, and shall cause its respective Affiliates, officers, directors, managers, employees, partners, agents, advisors or other representatives not to, issue or cause the publication of any press release or other public announcement relating to this Agreement, any Ancillary Agreement or the transactions contemplated hereby or thereby without the prior written consent of Purchaser.

Section 5.8 Wrong Pocket Provisions.

(a) If, at any time following the Closing, any Acquired Asset which should have been transferred to Purchaser pursuant to the terms of this Agreement and the Ancillary Agreements was not transferred to Purchaser as contemplated by this Agreement or the Ancillary Agreements, then Seller and Purchaser shall use commercially reasonable efforts to promptly transfer such Acquired Asset (and any related liability and obligation which is an Assumed Liability) to Purchaser for no additional consideration.

(b) If, at any time following the Closing, any Assumed Liability was not transferred and assumed by Purchaser as contemplated by this Agreement or the Ancillary Agreements, then Seller and Purchaser shall each use commercially reasonable efforts to promptly cause such Assumed Liability (and any related property, right or asset that is an Acquired Asset) to be transferred to and assumed by Purchaser.

(c) If, at any time following the Closing, any Excluded Asset which should have been retained by Seller pursuant to the terms of this Agreement or the Ancillary Agreements was transferred to Purchaser, then Seller and Purchaser shall use commercially reasonable efforts to promptly transfer such Excluded Asset to Seller or an Affiliate thereof nominated by Seller for no additional consideration.

(d) If, at any time following the Closing, any Excluded Liability (whether arising prior to, at or following the Closing) was transferred and assumed by Purchaser as contemplated by this Agreement or the Ancillary Agreements, then Seller and Purchaser shall each use commercially reasonable efforts to promptly transfer, and a Seller or any Affiliate thereof nominated by Seller, shall assume such Excluded Liability.

Section 5.9 Restrictive Covenants.

(a) Non-Competition. Seller covenants and agrees that, for a period of [***] following the Closing (the “**Restricted Period**”), Seller will not, and will cause its Affiliates not to, directly or indirectly, engage or participate in any manner (as an owner, equity holder, financing source, director, manager, officer, employee, agent, representative, consultant, service provider or otherwise) in any business (i) utilizing the Product or (ii) primarily engaged in the research, development or commercialization of a drug program specifically targeting the topical treatment of impetigo due to *Staphylococcus aureus* or *Streptococcus pyogenes*, in each case anywhere in the United States of America. Nothing contained in this Section 5.9(a) shall in and of itself prohibit Seller or its Affiliates from (A) the passive ownership, directly or indirectly, of less than 5% of any securities of any Person traded on a national securities exchange or traded in the over-the-counter market, (B) directly or indirectly, engaging or participating (as an owner, equity holder, financing source, director, manager, officer, employee, agent, representative, consultant, service provider or otherwise) in any business not otherwise utilizing the Product; provided in each case that Seller and its Affiliates are not otherwise in breach of this Section 5.9(a), or (C) undertaking any act or conduct expressly contemplated by this Agreement or any Ancillary Agreement.

(b) Non-Solicitation. Seller covenants and agrees that, during the Restricted Period, Seller will not, and will cause its Affiliates not to, directly or indirectly solicit, induce or recruit, or attempt to solicit, induce or recruit, for employment or engagement, any individual who is, or was at any time during the [***] period immediately preceding the Closing Date, an employee or individual independent contractor of Purchaser, LNHC, Inc., Chromocell Therapeutics Australia Pty Ltd., or Channel Pharmaceutical Corporation (each, a “**Restricted Person**”), or otherwise seek to adversely influence or alter any Restricted Person’s relationship with the Business and/or Purchaser or any of its Affiliates; provided, however, (i) general solicitations for employment or services in a newspaper or any other media or on the internet, or through a search firm, which general solicitations do not specifically target any employee or independent contractor of the Purchaser shall not constitute violations of this Section 5(b), and (ii) this Section 5(b) shall not prevent Seller or its Affiliates from soliciting, hiring, or engaging any such person who: (A) responds to solicitations of employment not specifically directed at employees or independent contractors of Purchaser (including by a recruiter or search firm), (B) has not been employed by Purchaser for at least six (6) months prior to commencement of employment or engagement discussions between the Seller or its Affiliates and such Person or (C) initiates discussions regarding such employment or engagement without any direct or indirect solicitation by the Seller or its Affiliates.

(c) Non-Disparagement. Each Party covenants and agrees that such Party will, and will cause its respective Affiliates not to, directly or indirectly, make, cause to be made or condone the making of any statement or other communication, written or otherwise, that could constitute disparagement or criticism of, or that could otherwise be considered to be derogatory or detrimental to, or otherwise reflect adversely on, harm the reputation of, or encourage any adverse action against any other Party. Nothing in this Section 5.9(b) shall limit any Party’s or its respective Affiliate’s truthful testimony compelled by Law.

(d) Acknowledgements; Remedies. Each Party acknowledges and agrees that (i) the covenants and agreements set forth in this Section 5.9 were a material inducement to such Party to enter into this Agreement and to perform its respective obligations hereunder, (ii) the restrictions and covenants in this Section 5.9, and the rights and remedies conferred upon such Party, are necessary to protect the goodwill of the Business, and (iii) the length of time, scope and geographic coverage of the covenants set forth in this Section 5.9 are reasonable. Such Party further acknowledges and agrees that irreparable injury may result to another Party if such first Party or any of its respective Affiliates breaches any of the terms of this Section 5.9, and that in the event of an actual breach by such first Party or any of its respective Affiliates of any of the provisions contained in this Section 5.9, such other Party may not have any adequate remedy at Law. Each Party accordingly agrees that in the event of any actual or threatened breach by any Party or any of its respective Affiliates of any of the provisions contained in this Section 5.9, the applicable other Party shall be entitled to injunctive and other equitable relief without (A) posting any bond or other security, (B) proving actual damages and (C) showing that monetary damages are an inadequate remedy. Nothing contained herein shall be construed as prohibiting any Party from pursuing any other remedies available to it for such breach, including the recovery of any damages that it is able to prove. Each Party shall cause its respective Affiliates to comply with this Section 5.9, and shall be liable for any breach by any of its Affiliates of this Section 5.9.

Section 5.10 Customer and Supplier Inquiries; Accounts Receivable. From and after the Closing, Seller will refer to Purchaser all customer, supplier, service provider or other inquiries or correspondence relating to the Acquired Assets, the Assumed Liabilities or the conduct or operations of the Business after the Closing. Seller will promptly remit to Purchaser all payments and invoices received after the Closing that relate to the Acquired Assets, the Assumed Liabilities or, other than with respect to the Excluded Assets or the Excluded Liabilities, the conduct or operations of the Business. Purchaser will have the right and authority to collect for its own account all items that are included in the Acquired Assets and to endorse with the name of Seller any checks or drafts received with respect to any such items. Purchaser will promptly remit to Seller all payments and invoices received after the Closing that relate to the Excluded Assets or the Excluded Liabilities.

Section 5.11 Protective Covenants. Purchaser shall not take, nor shall Purchaser cause or permit any of its controlled Affiliates to take, any action the primary purpose of which action is (a) to reduce the amount of the Purchase Price, including the amounts payable under Sections 2.3(b) and 2.3(c), or (b) to avoid the achievement of any of the relevant thresholds or Milestone Events. Purchaser agrees that Seller shall have the right, at Seller's own expense and upon at least [***] prior written notice to Purchaser, to have an independent certified public accountant to whom Purchaser has no reasonable objection, to examine the information and records in Purchaser's possession or control that relate to the achievement of any relevant thresholds or Milestone Events after the Closing; provided that such access shall be permitted no more than once per calendar year. The Parties may agree in writing to additional access in the event of an alleged breach, and any such additional access shall be limited in scope to the records reasonably necessary to address the alleged breach.

Section 5.12 Lien Releases. Promptly after the Closing Date, Seller shall deliver to Purchaser a copy of all filed UCC-3 termination or amendment statements (as the case may be, including any partial release statements) evidencing the termination of all Liens with respect to the Acquired Assets.

Section 5.13 Specified Contracts Matters. Immediately following the Closing (and in any event, on the same Business Day), in connection with the termination of the License Agreement, Seller (i) shall deliver a notice to Perrigo and Medimetriks and (ii) shall request Ferrer deliver a notice to Perrigo, in each case, in the form agreed to by Purchaser and Seller.

Section 5.14 Termination of License Agreement. Immediately following the Closing (and in any event, on the same Business Day), Purchaser shall, and shall cause Ferrer to, terminate the License Agreement.

ARTICLE VI INDEMNIFICATION

Section 6.1 Survival.

(a) The representations and warranties contained in Article III and Article IV shall survive the Closing and continue in full force and effect until, and expire on, the date that is [***] after the Closing Date; provided, however, that the Fundamental Representations shall survive the Closing and continue in full force and effect through the date that is [***] following the expiration of the statute of limitations applicable thereto. The covenants or other agreements contained in this Agreement that by their terms contemplate performance prior to the Closing shall not survive the Closing. All covenants or other agreements contained in this Agreement that by their terms contemplate performance at or after the Closing Date shall survive the Closing until the earlier of (i) their performance in accordance with their respective terms or (ii) the expiration of the applicable statute of limitations.

(b) Notwithstanding anything to the contrary contained herein, any claim asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period set forth above shall not thereafter be barred by the expiration of such applicable survival period set forth above and such claims shall survive until finally resolved.

Section 6.2 Indemnification By Seller. From and after the Closing, and subject to the terms and conditions of this Agreement, including this Article VI, Seller shall indemnify, defend and hold harmless each of the Purchaser Indemnified Parties from and against any and all Losses resulting from or arising out of:

(a) any inaccuracy in or the breach of any representation or warranty made by Seller contained in Article III;

(b) (i) any breach of any covenant or agreement contained in this Agreement by Seller that by its terms provides for obligations following the Closing and (ii) any material breach by the Consultant of her material obligations under the Consulting Services Agreement following the Closing through the earlier of (A) the day Commercial Quantities are achieved and (B) the termination or expiration of the Consulting Services Agreement;

(c) any suit, action, litigation, hearing, inquiry, examination, demand, proceeding, arbitration, mediation, claim, charge, investigation or audit, pending or threatened, related to the Business or the Acquired Assets that occurred and was known by Seller prior to the Closing;

(d) any Excluded Liability;

(e) any outstanding debt related to the Business or the Acquired Assets prior to Closing;

(f) any Seller Taxes; and

(g) each of the following: (i) the actions of Seller contemplated by Section 5.13, (ii) the Authorized Generic Agreement, (iii) the Consent to Assignment dated July 26, 2018, by and between Seller (as successor in interest to Biofrontera Newderm LLC, as successor in interest to Cutanea Life Sciences, Inc.) and Medimetriks, and (iv) any other agreement related to the Business or the Acquired Assets by and among Seller on the one hand and Perrigo and/or Medimetriks on the other hand, but in each case, specifically excluding any Losses with respect to the matters set forth in this subsection (g) incurred by the Purchaser Indemnified Parties prior to the Closing.

Section 6.3 Indemnification by Purchaser. From and after the Closing, and subject to the terms and conditions of this Agreement, including this Article VI, Purchaser shall indemnify, defend and hold harmless each of the Seller Indemnified Parties from and against any and all Losses resulting from or arising out of:

(a) any inaccuracy in or the breach of any representation or warranty made by Purchaser contained in Article IV;

(b) any breach of any covenant or agreement contained in this Agreement by Purchaser that by its terms provides for obligations following the Closing;

(c) any Assumed Liability; and

(d) the Acquired Assets, including the ownership, use and/or operation of the Acquired Assets from and after the Closing.

Section 6.4 Indemnification Procedure. The party making a claim under this Article VI shall be referred to as the “**Indemnified Party**” and the party against whom such claims are asserted under this Article VI shall be referred to as the “**Indemnifying Party**.”

(a) In the event that any Indemnified Party receives notice of the assertion of any claim or of the commencement of any Proceeding by any Person who is not a Party or an Affiliate of a Party (a “**Third Party Claim**”) against such Indemnified Party, with respect to which any Indemnifying Party is required to provide indemnification under this Article VI, such Indemnified Party shall give written notice regarding such Third Party Claim to such Indemnifying Party within [***] after learning of such Third Party Claim; provided that the failure to so notify such Indemnifying Party shall not relieve such Indemnifying Party of its obligations under this Article VI except to the extent (and only to the extent) that such Indemnifying Party forfeits substantial rights or defenses by reason of such failure. Such notice by such Indemnified Party shall describe the Third Party Claim in reasonable detail, include copies of all material written evidence thereof and indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by such Indemnified Party.

(b) The Indemnifying Party shall be entitled to participate in the defense of such Third Party Claim at such Indemnifying Party’s own expense or such Indemnifying Party at its option shall be entitled to assume the defense thereof (subject to the limitations set forth below), at such Indemnifying Party’s expense and by such Indemnifying Party’s own counsel, by delivering written notice to the Indemnified Party of its election to assume the defense of such Third Party Claim within [***] of receipt of notice from the Indemnified Party, and the Indemnified Party shall reasonably cooperate in good faith in such defense. In the event that such Indemnifying Party assumes the defense of such Third Party Claim, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of such Indemnified Party. If the Indemnifying Party elects not to defend such Third Party Claim or does not expressly elect to assume the defense of such Third Party Claim within the time period and otherwise in accordance with this Section 6.4(b), such Indemnified Party may pay, compromise, defend such Third Party Claim and seek indemnification, subject to the limitations set forth in this Article VI, for any and all Losses based upon, arising from or relating to such Third Party Claim.

(c) If the Indemnifying Party has assumed the defense of a Third Party Claim in accordance with the terms hereof, the Indemnified Party shall be entitled, at its own cost and expense, to participate in the defense of such Third Party Claim, with counsel selected by such Indemnified Party subject to such Indemnifying Party’s right to control the defense thereof.

(d) Seller and Purchaser shall cooperate in good faith with each other in all reasonable respects in connection with the defense of any Third Party Claim. In no event shall the Indemnified Party or the Indemnifying Party settle a Third Party Claim without the prior written consent of the Indemnified Party or the Indemnifying Party, as applicable (such consent not to be unreasonably withheld, conditioned or delayed).

(e) Notwithstanding anything to the contrary contained herein, (i) the Indemnifying Party shall not be entitled to control the defense of a Third Party Claim (and the Indemnified Party shall maintain or assume control of the defense of such Third Party Claim) if (A) the Third Party Claim relates to or involves any criminal proceeding, or (B) the Third Party Claim seeks an injunction or other equitable relief against the Indemnified Party, and (ii) if Seller or any of its respective Affiliates (or any of their respective officers, directors, managers or employees) is the Indemnifying Party, such Indemnifying Party shall not be entitled to control the defense of a Third Party Claim (and Purchaser shall maintain or assume control of the defense of such Third Party Claim) if (A) the Third Party Claim could reasonably be expected to materially and adversely affect the Purchaser Indemnified Party (as determined by the Purchaser Indemnified Party in good faith) other than as solely a result of money damages, (B) the Purchaser Indemnified Party reasonably believes that the Losses relating to the claim could exceed an amount equal to the Purchase Price, (C) there exists or would, or could reasonably be expected to, exist a conflict of interest that would make it inappropriate in the commercially reasonable judgment of the Purchaser Indemnified Party for the same counsel to represent both the Purchaser Indemnified Party and Seller, (D) the Third Party Claim involves a material customer or supplier of the Business or any Purchaser Indemnified Party, or (E) Seller fails to defend the Third Party Claim in a commercially reasonable manner.

(f) The Indemnifying Party or the Indemnified Party, as applicable, may not, without the prior written consent of the other, consent to a settlement of or the entry of any judgment arising from, any such Third Party Claim that (i) grants any relief other than monetary damages that are paid in full by the Indemnifying Party concurrently with the settlement, (ii) includes a finding or admission of any violation of Law by any Indemnified Party, (iii) may reasonably be expected to materially and adversely effect the business of the Indemnified Party, or (iv) does not expressly and unconditionally release each Indemnified Party from all Liabilities and obligations with respect to such Third Party Claim.

(g) In the event any Indemnified Party has a claim for indemnification under this Article VI against any Indemnifying Party on account of a Loss that does not result from a Third Party Claim, such Indemnified Party shall deliver prompt written notice of such claim to such Indemnifying Party, provided that the failure to so notify such Indemnifying Party shall not relieve such Indemnifying Party of its obligations under this Article VI except to the extent (and only to the extent) that such Indemnifying Party forfeits substantial rights or defenses by reason of such failure. Such notice by such Indemnified Party shall describe such claim in reasonable detail, include copies of all material written evidence thereof and indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by such Indemnified Party. Such Indemnifying Party shall have [***] after its receipt of such notice to respond in writing to such claim. During such [***] period, such Indemnified Party shall allow such Indemnifying Party and its representatives to investigate the matter or circumstance alleged to give rise to such claim, and whether and to what extent any amount may be payable in respect of such claim and such Indemnified Party shall reasonably assist in good faith such Indemnifying Party's investigation.

Section 6.5 Certain Limitations.

(a) Seller shall not be liable under Section 6.2(a) with respect to Losses unless the aggregate amount of such Losses incurred by the Purchaser Indemnified Parties with respect to all matters for which indemnification is to be provided under Section 6.2(a) exceeds an amount equal to [***] (the "**Basket Amount**"), and if and when such Basket Amount is met, then Seller will be liable under Section 6.2(a) only in respect of all Losses in excess of the Basket Amount, subject in all respects to Section 6.5(b) and Section 6.5(c); provided, however, that such limitation shall not apply to any claim for indemnification for a breach of or inaccuracy in any Fundamental Representation or any claim based on Fraud.

(b) Subject to the other limitations in this Article VI, Seller's maximum aggregate liability for Losses pursuant to Section 6.2(a), and the Purchaser Indemnified Parties' sole and exclusive recourse for Losses against Seller pursuant to Section 6.2(a), shall not exceed and be limited in the aggregate to [***] (the "**Cap**"); provided, however, that such limitation shall not apply to any claim for indemnification for a breach of or inaccuracy in any Fundamental Representation or any claim based on Fraud. Subject to the other limitations in this Article VI, Purchaser's maximum aggregate liability for Losses pursuant to Section 6.3(a), and the Seller Indemnified Parties' sole and exclusive recourse for Losses against Purchaser pursuant to Section 6.3(a), shall not exceed and be limited in the aggregate to the Cap; provided, however, that such limitation shall not apply to any claim for indemnification for a breach of or inaccuracy in any Fundamental Representation or any claim based on Fraud.

(c) Subject to the other limitations in this Article VI and the immediately following sentence, in the event that any Purchaser Indemnified Party or Seller Indemnified Party suffers a Loss that is entitled to indemnification pursuant to Section 6.2 or Section 6.3, respectively, including in respect of breaches of any Fundamental Representation, the maximum aggregate amount that all Purchaser Indemnified Parties or Seller Indemnified Parties, respectively, may recover from Seller or Purchaser, respectively, with respect to any and all such Losses shall be equal to the Purchase Price. The limitations on the rights of the Purchaser Indemnified Parties or Seller Indemnified Parties to seek recourse against Seller or Purchaser, respectively, set forth in this Section 6.5 shall not apply to Seller's or Purchaser's liability for claims based on Fraud.

Section 6.6 Materiality Qualifiers. Notwithstanding anything to the contrary contained herein, for purposes of determining (a) whether a breach of a representation or warranty exists for purposes of this Agreement and (b) the amount of Losses arising from such a breach for which the Indemnified Parties are entitled to indemnification under this Agreement, each such representation and warranty shall be read without giving effect to any qualification that is based on materiality, including the words "material," "Material Adverse Effect," "in any material respect" and other uses of the word "material" or words of similar meaning (and shall be treated as if such words were deleted from such representation or warranty).

Section 6.7 Exclusive Remedy. Subject to Section 7.11 (*Specific Performance*) and other than in the case of Fraud, the Parties hereby acknowledge and agree that the indemnification provisions set forth in this Article VI are and shall be their sole and exclusive remedy with respect to (a) any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein and this Agreement and the Ancillary Agreements, or (b) any and all other Losses, claims or damages otherwise arising out of or relating to this Agreement and the Ancillary Agreements, the transactions contemplated hereby and thereby and the subject matter of this Agreement and the Ancillary Agreements. In further of the foregoing, each Party hereby waives, to the fullest extent permitted by applicable Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein, and any and all rights, claims and causes of action otherwise arising out of or relating to this Agreement and the Ancillary Agreements, the transactions contemplated hereby and thereby and the subject matter of this Agreement and the Ancillary Agreements (other than, in each of the foregoing cases, Fraud), that it may have against any other Party and its Affiliates and each of their respective representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VI. Nothing in this Section 6.7 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled pursuant to Section 7.11 (*Specific Performance*).

Section 6.8 No Double Recovery. Notwithstanding anything herein to the contrary, no Party or other Person entitled to indemnification under this Article VI shall be entitled to indemnification or reimbursement under any provision of this Agreement or any Ancillary Agreement for any amount to the extent such Party, other Person or their respective Affiliate has been actually indemnified or reimbursed for such amount under any other provision of this Agreement or any Ancillary Agreement.

Section 6.9 Insurance Proceeds. The amount of Losses incurred by an Indemnified Party shall be net of, and eroded by, any insurance or other third party proceeds and any indemnity, contribution or other similar payment actually received by the Indemnified Party in respect of any such claim giving rise to such Losses. The Indemnified Party will use commercially reasonable efforts to collect any such insurance, other than under self-insurance policies, but shall under no circumstances have any obligation to engage in any litigation in connection therewith. In the event that any insurance, third party, indemnity, contribution or other similar proceeds are actually received by an Indemnified Party as contemplated in this Section 6.9 with respect to any Losses for which such Indemnified Party has been indemnified hereunder, then a refund equal to the net aggregate amount of the recovery shall be made promptly to the applicable Indemnifying Party by such Indemnified Party.

Section 6.10 Mitigation. In the event of any breach giving rise to an indemnification obligation under this Article VI, the Indemnified Party agrees to use commercially reasonable efforts to mitigate or otherwise minimize any Losses, liability or damage which forms the basis of a claim hereunder or in connection with the transactions contemplated by this Agreement.

Section 6.11 Payment of Indemnification Claims.

(a) Once a claim for indemnification under this Article VI by a Purchaser Indemnified Party has been finally determined (whether by agreement among the parties to such claim or by final judgement of a court of competent jurisdiction), then, subject to the limitations set forth in this Article VI, Seller shall satisfy such claim in full by (as determined in Purchaser's sole discretion) (i) Seller making a payment in cash to such Purchaser Indemnified Party or Purchaser Indemnified Parties and/or (ii) Purchaser cancelling any payment, or portion thereof, otherwise payable by Purchaser to Seller pursuant to Section 2.3(c). In the event Seller fails to make payment in cash to satisfy any claim for indemnification under this Article VI within [***] of when such payment is due under this Article VI, Purchaser shall have the right to cancel any payment, or portion thereof, otherwise payable by Purchaser to Seller pursuant to Section 2.3(c) equal to the amount of such failed payment.

(b) Once a claim for indemnification under this Article VI by a Seller Indemnified Party has been finally determined (whether by agreement among the parties to such claim or by final judgement of a court of competent jurisdiction), then, within [***] following such final determination, subject to the limitations set forth in this Article VI, Purchaser shall pay to such Seller Indemnified Party or Seller Indemnified Parties such amount to satisfy such claim in full.

Section 6.12 Tax Treatment of Payments. All indemnification payments made pursuant to this Agreement shall be treated by Purchaser and Seller as adjustments to the Purchase Price for Tax purposes, except as otherwise required by applicable Law.

**ARTICLE VII
MISCELLANEOUS**

Section 7.1 Notices. All notices and other communications made pursuant to or under this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) on the date sent when sent by electronic mail, (c) one (1) Business Day after being sent by a nationally recognized overnight courier service (receipt requested), or (d) three (3) Business Days after the date mailed if sent by registered or certified mail, postage prepaid, return receipt requested. All notices and other communications under this Agreement shall be delivered to the addresses set forth below, or such other address as such Party may have given to the other Parties by notice pursuant to this Section 7.1 (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereinafter maintain):

If to Seller, from Agreement Date through November 30, 2025:	Biofrontera Inc. 120 Presidential Way, Suite 330 Woburn, MA 01801 Attention: [***]
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If to Seller, following November 30, 2025: with a copy to (which shall not constitute notice):	Biofrontera Inc. 660 Main Street, First Floor Woburn, MA 01801 Attention: [***] Gunster, Yoakley, & Stewart, P.A. 1 Independent Drive, Suite 2300 Jacksonville, FL 32202 Attention: [***]
If to Purchaser: with a copy to (which shall not constitute notice):	Pelthos Therapeutics, Inc. 4020 Stirrup Creek Drive Durham, NC 27703 Suite 110 Attention: [***] Paul Hastings LLP 200 Park Avenue New York, NY 10166 Attention: [***]

Section 7.2 Expenses. Except as otherwise provided herein, all fees, costs and expenses incurred in connection with or related to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby shall be paid by the Party incurring such fees, costs and expenses.

Section 7.3 Entire Agreement. All references in this Agreement or the Ancillary Agreements to this Agreement shall include all Exhibits and Schedules hereto. This Agreement, including the Exhibits and Schedules hereto, and the Ancillary Agreements constitute the entire agreement of the Parties relating to the subject matter hereof and thereof and supersede all prior agreements or understandings, both written and oral, among the Parties with respect to such subject matter hereof and thereof.

Section 7.4 No Third-Party Beneficiaries. Except as expressly provided in Article VI, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer on any other Person any legal or equitable rights, benefits or remedies of any kind or nature whatsoever under or by reason of this Agreement.

Section 7.5 Assignments. This Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns, but will not be assignable or delegable by any Party, by operation of Law or otherwise, without the prior written consent of the other Party; provided, however, that nothing in this Agreement shall or is intended to limit the ability of Purchaser to assign its rights or obligations under this Agreement, in whole or in part, without the consent of Seller to any Affiliate of Purchaser that is fully capable of performing all of Purchaser's obligations required under this Agreement; provided further, however that in the event of any such assignment by Purchaser, Purchaser shall remain liable for the full and timely performance of all of Purchaser's obligations hereunder following any such assignment or delegation. Any attempted assignment in violation of this Section 7.5 shall be void *ab initio*.

Section 7.6 Amendment; Waiver. This Agreement may be amended, modified or waived only by the written agreement of Purchaser and Seller. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure or delay of any Party to exercise any right, remedy, power or privilege given to such Party under this Agreement or otherwise available to such Party or to insist upon strict compliance by any other Party with its obligations hereunder shall operate or be construed as a waiver thereof, and no single or partial exercise of any such right, remedy, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 7.7 Agreement Controls. In the event that the terms of any Ancillary Agreement are inconsistent with, conflict with or contradict the terms of this Agreement, the terms of this Agreement shall govern and prevail.

Section 7.8 Severability. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable Law, the validity, legality and enforceability of all other terms and provisions of this Agreement will not in any way be affected or impaired. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

Section 7.9 Governing Law. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, inducement to enter and/or performance of this Agreement (whether related to breach of contract, tortious conduct or otherwise and whether now existing or hereafter arising) shall be governed by, the internal Laws of the State of Delaware, without giving effect to any Law that would cause the Laws of any jurisdiction other than the State of Delaware to be applied.

Section 7.10 Consent to Jurisdiction; Service of Process; Waiver of Jury Trial.

(a) Each Party agrees that any Proceeding arising out of or relating to this Agreement or the Ancillary Agreements or any transaction contemplated hereby or thereby shall be brought exclusively in any state or federal court located in New Castle County, Delaware and each of the Parties hereby submits to the exclusive jurisdiction of such courts for itself and with respect to its property, generally and unconditionally, for the purpose of any such Proceeding. A final judgment in any such Proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each Party agrees not to commence any Proceeding arising out of or relating to this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby except in the courts described above (other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described above), irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby in any such court, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum or does not have jurisdiction over any Party. Each Party agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth herein shall be effective service of process for any such Proceeding.

(b) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY AGREEMENTS, THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF. EACH PARTY FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED OR WARRANTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10.

Section 7.11 Specific Performance. The Parties 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. Accordingly, each of the Parties shall be entitled to enforce specifically the provisions of this Agreement, including obtaining an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which such Party is entitled at law or in equity. Each Party further agrees not to assert and waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement to post a bond in connection with the remedies described herein.

Section 7.12 Other Remedies. Except to the extent set forth otherwise in this Agreement, all remedies under this Agreement expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or at law or in equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy and nothing herein shall be deemed a waiver by any Party of any right to specific performance or injunctive relief.

Section 7.13 Rules of Construction. The following rules of construction shall govern the interpretation of this Agreement:

- (a) all references to Articles, Sections, Exhibits or Schedules are to Articles, Sections, Exhibits or Schedules in this Agreement;
- (b) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP;
- (c) unless the context otherwise requires, words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter;
- (d) whenever the words “include,” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “but not limited to”;
- (e) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not simply mean “if”;

(f) references to any statute, rule, regulation or form (including in the definition thereof) shall be deemed to include references to such statute, rule, regulation or form as amended, modified, supplemented or replaced from time to time (and, in the case of any statute, include any rules and regulations promulgated under such statute), and all references to any section of any statute, rule, regulation or form include any successor to such section;

(g) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is referenced in beginning the calculation of such period will be excluded (for example, if an action is to be taken within two days after a triggering event and such event occurs on a Tuesday, then the action must be taken on or prior to Thursday); if the last day of such period is a non-Business Day, the period in question will end on the next succeeding Business Day;

(h) time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement;

(i) the subject headings of Articles and Sections of this Agreement are included for purposes of convenience of reference only and shall not affect the construction or interpretation of any of its provisions;

(j) (i) the terms “hereof,” “herein,” “hereby,” “hereto,” and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto; (ii) the term “any” means “any and all”, and (iii) the term “or” shall not be exclusive and shall mean “and/or”;

(k) (i) references to “days” means calendar days unless Business Days are expressly specified and (ii) references to “\$” mean U.S. dollars;

(l) the Parties intend that each representation, warranty, covenant and agreement contained herein shall have independent significance, and if any Party has breached any representation, warranty, covenant or agreement contained herein in any respect, the fact that there exists another representation, warranty, covenant or agreement relating to the same or similar subject matter that the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, covenant or agreement;

(m) any drafts of this Agreement or any Ancillary Agreement circulated by or among the Parties prior to the final fully executed drafts shall not be used for purposes of interpreting any provision of this Agreement or any Ancillary Agreement, and each of the Parties agrees that no Party or Indemnified Party shall make any claim, assert any defense or otherwise take any position inconsistent with the foregoing in connection with any dispute or Proceeding among any of the foregoing or for any other purpose; and

(n) the Parties have participated jointly in the negotiation and drafting of this Agreement and the Ancillary Agreements; in the event an ambiguity or question of intent or interpretation arises, this Agreement and the Ancillary Agreements 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 of the provisions of this Agreement or any Ancillary Agreement and the language used in it will be deemed to be the language chosen by the Parties to express their mutual intent.

Section 7.14 Counterparts; Deliveries. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Agreement may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature shall constitute an original for all purposes.

[The remainder of this page is intentionally left blank.]

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

PURCHASER:

PELTHOS THERAPEUTICS INC.

By: /s/ Scott M Plesha
Name: Scott M Plesha
Title: Chief Executive Officer

(Signature Page to Asset Purchase Agreement)

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

SELLER:

BIOFRONTERA INC.

By: /s/ E. Fred Leffler, III
Name: E. Fred Leffler, III
Title: Chief Financial Officer

(Signature Page to Asset Purchase Agreement)

EXHIBIT A

Form of Bill of Sale and Assignment and Assumption Agreement

[***]

SCHEDULES

[***]

*Certain confidential information contained in this exhibit have been omitted by means of redacting a portion of the text and replacing it with [***], pursuant to Regulation S-K Item 601(b)(10) of the Securities Act of 1933, as amended. Certain confidential information has been excluded from this exhibit because it is: (i) not material; and (ii) the registrant treats such information as private or confidential.*

LICENSE AND API SUPPLY AGREEMENT

This LICENSE AND API SUPPLY AGREEMENT (hereinafter referred to as the “**Agreement**”) is effective as of 6th November 2025 (hereinafter referred to as “**Effective Date**”)

Between:

- A. **PELTHOS THERAPEUTICS INC.** (hereinafter referred to as the “**Company**”) a company incorporated and registered in Nevada, located at 4020 Stirrup Creek Drive, Suite 110, holder of Tax identification Number FEIN: 86-3335449.
- B. **FERRER INTERNACIONAL, S.A.**, with its head office at Av. Diagonal, 549, 5th, floor, 08029 Barcelona (Spain), with Tax Identity Number and **INTERQUIM, S.A.U.** (hereinafter solely referred as “**Interquim**” and jointly with Ferrer Internacional, S.A. referred to as “**Ferrer**”), incorporated and registered in Spain, located at C/ Joan Buscallà 10, 08173, Sant Cugat del Vallès (Barcelona) with Tax Identity Number A-08536476.

The Company and Ferrer are hereinafter referred to collectively as the “**Parties**” and individually as a “**Party**”.

TAKING INTO CONSIDERATION:

1. That Ferrer Internacional, S.A. acquired certain Know How and IP rights through a License Agreement with the company Toyama Chemical Co., Ltd. (the “**Toyama License**”), which grants Ferrer an exclusive license, with the right to sublicense such rights to third parties , and is also the owner of certain patent rights; and
 2. That Ferrer is the holder of the Marketing Authorization of the End Product (as defined below) in the Territory (as defined below); and
 3. That Interquim (which it is an affiliate of Ferrer Internacional, S.A.) is engaged in the manufacture and supply of the API (as defined below) and has the adequate technology necessary for its manufacture and supply; and
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4. That the Company enjoys a strong reputation in the Territory (as defined below), possesses the requisite scale, presence and infrastructure to perform pursuant to this Agreement; and
5. That after evaluating the properties of the End Product, the Company is interested being supplied with API to use such API to for the Exploitation (as defined below) of the End Product in the Territory; and
6. Interquim is willing to sell API (and associated rights in the API) to the Company, for the purpose described in this Agreement and upon the terms and conditions set forth herein, and Ferrer Internacional, S.A. is interested in granting a license to the Company under the Ferrer Technology (as defined below) for the exclusive right to Exploit the End Product in the Territory;

NOW THEREFORE, the Parties agree the following:

Article 1 – Definitions

In this Agreement the following terms and expressions have the following meaning it being understood that words denoting the singular include the plural and vice versa, all of it unless the context otherwise requires.

- 1.1 “**Active Pharmaceutical Ingredient**” or “**API**” or “**Substance**” means quinolone antibiotic (currently marketed under the name Ozenoxacin).
- 1.2 “**Affiliate**” means with respect to either Party any person, partnership, company or other entity which, directly or indirectly, Controls, is Controlled by or is under common control with such Party. “**Control**” means direct or indirect ownership or control of more than fifty percent (50%).
- 1.3 “**Agreement**” shall mean this License and API Supply Agreement, together with all Exhibits and Schedules thereto, as the same may be amended or modified from time to time in accordance with the terms hereof.
- 1.4 “**End Products**” means any and all pharmaceutical or medicinal products containing the Substance, either as a sole active ingredient or in combination with any other therapeutically active ingredients, for human use, including for treatment of topical bacterial infections, for example, impetigo, but expressly excluding any pharmaceutical preparations for ophthalmic use and/or the use of the API for ophthalmic indications.

- 1.5 “**Exploit**” or “**Exploitation**” means manufacture, have manufactured, develop, promote, market, distribute, use, sale, have sold, import, export, or other commercialization.
- 1.6 “**Ferrer Know-How**” shall mean all Know-How in any case owned or controlled by Ferrer of any of its Affiliates during the term of this Agreement that is necessary or useful for the Exploitation of the API or the End Products, including, without limitation, all Know-How licensed pursuant to the Toyama License.
- 1.7 “**Ferrer Patent**” shall mean the Patents listed in Annex 1.V, including without limitation all Patents owned or controlled and/or later filed by or later issued or licensed to Ferrer during the term of this Agreement or after its termination, that claim or cover inventions necessary or useful for the Exploitation of the API or the End Products, including, without limitation, all Patents licensed pursuant to the Toyama License.
- 1.8 “**Ferrer Technology**” shall mean, collectively, the Ferrer Patents and the Ferrer Know-How.
- 1.9 “**Ferrer Trademark**” shall mean the Trademarks listed in Annex 1.IV, including without limitation all Trademarks owned or controlled and/or later filed by or later issued or licensed to Ferrer during the term of this Agreement or after its termination, that are necessary or useful for the Exploitation of the API or the End Products, including, without limitation, all Trademarks licensed pursuant to the Toyama License.
- 1.10 “**GMP**” or “**cGMP**” means the current Good Manufacturing Practices, as amended from time to time, as currently notably defined in ICH Q7 “Good Manufacturing Practice for Active Pharmaceutical Ingredients”, the ICH-guidelines “Guidance for Industry, Q7 Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients: Questions and Answers”, the US “Code of Federal Regulations, Title 21: Part 11, 210 and 211 Current Good Manufacturing Practice” and EU GMP Guide Part II “Basic requirements for Active Substances used as Starting Materials” including its Annexes and other quality related regulations applicable to the Substance, all as amended from time to time.
- 1.11 “**Health Registration**” shall mean all registrations with and approvals from the relevant Governmental Authority necessary to market, sell and otherwise distribute the End Product in the Territory, including the technical, medical and scientific licenses, registrations, authorizations and/or approvals of such End Product (including any marketing authorizations, pricing approvals, reimbursement approvals, and labeling approvals, as applicable). With respect to the United States, the term “Health Registration” shall include, as applicable, an “Investigational New Drug Application” or a “New Drug Application,” as defined in 21 C.F.R. Part 312 and 21 C.F.R. Part 314 respectively, for such End Product, as amended or supplemented from time to time.

- 1.12 “**Improvements**” shall mean all uses, inventions, modifications and discoveries, innovation, enhancement, improvement, whether patentable or not, related to the API and/or the End Products, discovered or conceived of by or on behalf of the Company or Ferrer (or their respective Affiliates), or by the Parties jointly, that may improve the marketability, safety or efficacy of the Products or which enable the API or the End Products to be Exploited more efficiently or at a lower cost, acquired or conceived during the life of this Agreement.
- 1.13 “**Initial Term**” shall mean a period of [***] as of the Launch Date in the Territory.
- 1.14 “**Intellectual Property Rights**” shall mean all of the following worldwide intangible legal rights, whether or not filed, perfected, registered or recorded and whether now or hereafter existing, filed, issued or acquired: (i) Patents; (ii) rights associated with works of authorship, including copyrights, copyright applications and copyright registrations; (iii) Trademarks; (iv) Know-How; and (v) all other intellectual or proprietary rights anywhere in the world. For clarity, all Company manufacturing Know-How shall be Intellectual Property Rights of Company.
- 1.15 “**Know How**” means information relating to the processes, techniques, regulatory data, method of manufacture and quality control, formulation and medical use of the Substance, including that information relating to the tolerability, safety and efficacy of the Substance, such as toxicological, pharmacological, clinical and chemical data and specifications of the Substance and the End Product. In particular, Know How shall include any and all confidential information and tangible materials, including, but not limited to, ideas, discoveries, inventions, improvements, information relating to the know-how, method of manufacture and quality control, formulation and medical use of the API and the End Products, including information relating to the tolerability, safety and efficacy of the API and/ or the End Products, such as toxicological, pharmacological, clinical and chemical data and specifications of the API and the End Products, trade secrets, information relating to the data, instructions, expert opinions, biological, chemical, pharmacological, toxicological, pharmaceutical, physical and analytical, safety, quality control, clinical and other data and information relating to the use or the sale of the End Product and/or the API, information not generally known and/or relating to the API or the End Product, and databases, practices, methods and information relating to the processes, specifications and techniques relating to, or associated with, the API and/ or the End Product.

- 1.16 “**Launch Date**” means the date of the commercial invoice that reflects Ferrer’s first sale of Substance to the Company for the purpose of marketing any End Product in the Territory.
- 1.17 “**Law(s)**” means all applicable laws, statutes, ordinances, rules, regulations, directives, orders, judgments, decrees, or other legal requirements of any governmental authority, including, without limitation, those relating to the development, manufacture, packaging, labeling, handling, transportation, distribution, import, export, storage, marketing, sale, use, or disposal of the API or any End Products, as well as applicable anti-corruption, anti-bribery, competition, environmental, health, and safety laws (including, as applicable, the U.S. Food, Drug, and Cosmetic Act, the U.S. Federal Food, Drug, and Cosmetic Act, the European Union’s pharmaceutical directives and regulations, and any laws relating to cGMP, GLP, or GCP).
- 1.18 “**License**” shall mean Company’s right to Exploit the End Products including the API in the Territory for human use under the Ferrer Technology.
- 1.19 “**Marketing Authorization**” shall mean the new drug application (“**NDA**”) filed with the Regulatory Authority in the Territory with respect to the End Products, including New Drug Application No. 208945, filed with the FDA on June 23, 2016.
- 1.20 “**Net Sales**” shall mean, with respect to the End Products for the specified period, gross amount invoiced, billed or otherwise recorded for sales of the End Product anywhere in the Territory during such period by or on behalf of the Company, its Affiliates and/or sublicensees to a Third Party in an arms-length transaction less the following amounts, accrued in accordance with GAAP applied on a consistent basis; provided that, any given amount may be taken as a permitted deduction only once:

- a) any and all credits for End Products returns in the Territory, including, but not limited to, credits for returned, unsold or short-dated End Products, allowances granted or included in the invoice, recalls, cash discounts, customer program accruals (overbills, administrative fees, third party rebates, sales brokerage and volume rebates), consignment sales, wholesaler and retailer fees, other adjustments and rebates, including, but not limited to, Medicaid and other state or governmental rebates, charge backs, floor stock adjustments, amounts corresponding to usual and customary retroactive price reductions actually taken, and similar items that may be estimated in accordance with GAAP;
- b) any receivables that have been included in gross sales and are deemed to be uncollectible according to GAAP. Such bad debt deduction shall be applied to Net Sales in the period in which such receivables are reserved for and shall be exclusive of any bad debt or uncollectible receivables unrelated to the End Products; and
- c) any other usual and customary gross to net sales deductions for pharmaceutical products in the Territory.

With respect to sales of an End Product invoiced in U.S. dollars, Net Sales shall be determined in U.S. dollars. With respect to sales of an End Product invoiced in a currency other than U.S. dollars, 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 the Company's method for calculating rates of exchange in the preparation of the Company's annual financial statements in accordance with GAAP as consistently applied.

- 1.21 **"Patent"** shall mean any of the following, whether existing now or in the future anywhere in the world: any issued patent, including any inventor's certificate, patent applications, supplemental protection certificate, including any division, continuation, continuation-in part, substitution, registration, renewal, any pending application for any of the foregoing, reissue, extension, confirmation, re-examination, revalidation or registration thereof and any patent issuing thereon, utility models (where applicable), including any substitute, renewal or any like governmental grant for protection of inventions, provisional and converted provisional application, re-examination and registration of foreign counterpart thereof.

- 1.22 “**Specifications**” means the specifications for the Substance as set forth in Annex 2.
- 1.23 “**Regulatory Authority**” means any regulatory or governmental authority, competent for approvals, licenses, registrations, marketing authorizations, reimbursement decisions, variations and/or safety issues with respect to the Substance and/or medicinal products, including the End Products.
- 1.24 “**Territory**” means the United States of America, Puerto Rico and the U.S Virgin Islands.
- 1.25 “**Third Party**” means any person or entity other than Ferrer, Interquim or the Company.
- 1.26 “**Trademark(s)**” means trademarks, service marks, trade dress, and trade names, whether registered or not, pending applications to register the foregoing, and common law trademarks, service marks and trademarks, designs, logos, and other designations of origin, together with the goodwill symbolized thereby.

Article 2 – Grant of Rights

- 2.1 Ferrer, subject to the terms and conditions hereof, grants to the Company, under the Ferrer Technology the exclusive (even as to Ferrer), sublicensable, royalty-bearing license to Exploit the Substance in connection with the Exploitation of the End Product in the Territory, and the Company hereby accepts such appointment. Ferrer shall allow the Company and its Affiliates and sublicensees to cross reference Ferrer’s (and its Affiliate’s) regulatory filings (such as a drug master file) and such other regulatory submissions controlled by Ferrer (or its Affiliates) applicable to such Substance and/or the manufacture thereof, as the case may be. Ferrer shall also supply analytical test methods and other testing know-how including method validation required to perform release testing or other testing as may be required by the applicable Regulatory Authority and, upon request by Company, provide Company and its Affiliates and its sublicensees (including any End Product CMO), within [***] of such request, appropriate quantities of reference standards related to such Substance in order to facilitate its testing. For the avoidance of doubt, the foregoing license does not grant to the Company any rights to Toyama’s patents or know-how to the extent Ferrer has not received such rights from Toyama.

- 2.2 Furthermore, the Company, subject to the terms and conditions hereof (including, but not limited to, [Article 6](#)), shall purchase from Interquim all its needs of Substance exclusively from Interquim or its designee. For the avoidance of doubt, it is clarified that Interquim shall be free to commercially exploit the same and a similar Substance either by itself or through its Affiliates and/or supply the Substance to Third Parties for sale into the Territory, during the Initial Term of this Agreement and thereafter for purposes outside of the exclusive license granted to Company.
- 2.3 In addition to the above, Ferrer grants to the Company the exclusive, royalty-free, sublicensable license to use the Ferrer Trademarks (as described in [Article 11](#)) for the purpose of marketing, distributing, promoting and selling the End Product in the Territory.
- 2.4 During the Term, Ferrer agrees that it (and its Affiliates) will not manufacture or supply any End Product (or any similar product containing API) for itself or for any other person or entity (other than for Company and its Affiliates) in the Territory, nor shall Ferrer or its Affiliates solicit, initiate, propose, negotiate or enter any agreement with a third party with respect to the foregoing, in any case without Company's prior written consent (provided that the foregoing will not limit the right for Ferrer to enter into any agreement to assign or novate this Agreement to a third party in accordance with Section 15.2 without any written consent).

Article 3 – Consideration

- 3.1 **Upfront Payment.** Upon the Company's receipt of the initial quantity of API purchased pursuant to [Section 5.4](#), where such API strictly complies with all of the requirements and representations and warranties of this Agreement, the Company shall pay to Ferrer an upfront payment of one million two hundred thousand USD (\$1,200,000) (the "**Upfront Payment**").
- 3.2 **Running royalties.** In addition to the upfront payment, the Company shall pay to Ferrer a royalty of [***] based on Net Sales of the End Product by the Company, its Affiliates and Sublicensees until [***] (the "**Royalty Term**").
- 3.3 **Gross Revenue to Net Revenue Deductions.** The Parties acknowledge that Company will target deductions and credits amounting to no more than [***] of the gross invoiced sales of End Products for purposes of calculating Net Sales (the "**Target Deductions**"). During the Royalty Term, on a quarterly basis, the Parties shall meet and discuss and review such deductions and credits. If the Company reasonably determines that total deductions and credits exceed the Target Deductions it shall notify Ferrer in writing, and such deductions and credits exceeding the Target Deductions shall be permitted unless Ferrer objects in good faith and on a commercially reasonable basis within [***] following receipt of such notice.

For illustrative purposes only, the following table sets forth an example allocation of the Target Deductions. For the avoidance of doubt, the following table is not binding on either Party.

Category	Percentage	Description
Returns	***	Damaged and Dated Products
Rebates	***	Base Rebates and Enterprise Fees for Pharmacy Benefit Management
DSA Fees	***	Distribution Service Agreement Fees for Retail
CoPay Cards	***	Minimum Buy Down Cost for Patients at Pharmacy level
Total	***	

- 3.4 During the Royalty Term, all running royalties shall be calculated and payable on a quarterly basis and running royalties shall be paid *** following the end of each quarter. Each such payment shall be accompanied by a written report indicating the Net Sales during such quarter by End Products (including quantity of End Products) and a calculation of the royalties due. Royalties on Net Sales and all other amounts payable by the Company hereunder shall be paid by the Company in US Dollars to the bank account designated by Ferrer. Notwithstanding anything to the contrary in this Agreement, Company (with prior notice to Ferrer) may deduct and offset from any royalties or other amounts payable to Ferrer under this Agreement any damages, losses, costs, or expenses incurred by the Company arising out of or resulting from Ferrer's or Interquim's breach of this Agreement.

Additionally, the Parties agree to share exchange EUR/USD rate fluctuations covering the payment of royalties. More concretely, within the first *** after every calendar year, Ferrer will calculate the average annual EUR/USD rate based on the EUR/USD rates published in the Financial Times on the last business day of every month. Such EUR/USD average rate will be compared with the rate applied in every invoice during the year. If, as a result of this reconciliation, there arises a difference above or under ***, the Parties agree to share the resulting amount on an equitable basis (i.e., fifty percent (50%) each). Ferrer will report the reconciliation to the Company for its acceptance and, after ***, issue an invoice which will be debited/credited in the next *** by wire transfer into the accounts designated by the Parties.

- 3.5 During the Royalty Term, the Company shall keep, and require its Affiliates to keep, complete and accurate records of the sale or other disposition of End Products. During the Royalty Term, Ferrer shall have the right, at its own expense and upon reasonable notice, for the period during which a running royalty is due to Ferrer and for [***] thereafter, to have an independent certified public accountant to whom the Company has no reasonable objection examine the previous year's relevant books and records of account of the Company and its Affiliates selling End Products during reasonable business hours to determine whether appropriate payment has been made by the Company hereunder, provided, however, that if such examination reveals a discrepancy which is greater than [***] times the cost of the examination between the amount owing and the actual amount paid by the Company to Ferrer, then the Company shall be responsible for the costs associated with such examination. In all other cases, Ferrer shall be responsible for the costs associated with such examination. Any Company short-fall in the amount owing identified hereunder will fall due within [***] of being identified, along with interest accrued at [***] above the SOFR rate covering the period since the identified short-fall was originally due.
- 3.6 **Taxes.** All payments made under this Agreement shall be net prices and free and clear of any and all taxes (like sales and use taxes, consumption taxes, goods- and sale taxes or value added taxes or comparable taxes), duties, levies, fees or other charges, except for withholding taxes. Where any sum due to be paid to a Party hereunder is subject to any withholding tax, the Parties shall use commercially reasonable endeavours to do all such acts and things and to sign all such documents as will enable them to take advantage of any applicable double taxation agreement or treaty. In the event there is no applicable double taxation agreement or treaty, or if an applicable double taxation agreement or treaty reduces but does not eliminate such withholding or similar tax, the paying Party shall deduct any withholding taxes from payment and pay such withholding or similar tax to the appropriate government authority. In any case the contracting party (to be defined by the contract) will apply for issuing the tax certificate of paid withholding tax at the tax authority and send this certificate in the original version to the other Party within [***] days following that payment. Any payments to Ferrer by the Company subject to withholding taxes shall be increased to such an extent as to allow Ferrer to receive the net amounts due under this Agreement as provided in [Article 3](#). To the extent Ferrer is able to determine in its sole discretion that any taxes withheld reduced its Spanish income tax liability in the form of a foreign tax credit ("**FTC Amount**"), Ferrer will refund an amount equal to the FTC Amount back to the Company and will send a certification declaring the FTC Amount that reduced Ferrer's tax liability on its Spanish income tax return.

Cooperation and coordination: The Parties acknowledge and agree that it is the mutual objective and intent to minimize, to the extent legal, income and other taxes payable with respect to their collaboration efforts under this Agreement and that they shall use best efforts to cooperate and coordinate with each other to achieve such objective. If the fiscal or taxing authorities of any relevant jurisdiction assert that amounts are required to be withheld from the payments due to a Party hereunder, or the tax laws in one or more jurisdictions have changed so as to explicitly require such treatment, the Party made aware of such assertion or change in law shall inform the other Party within [***] and shall consult with the other Party regarding the consequences of such assertion or change.

Article 4 – DOSSIERS, KNOW-HOW AND REGULATORY APPROVALS

- 4.1 Ferrer shall and hereby does assign to Company, or its Affiliate, LNHC, Inc. (“**LNHC**”), ownership of all rights, title and interest in and to the Marketing Authorization. As soon as reasonably practicable (and in all cases within [***] following the execution hereof), Ferrer and Company or LNHC shall submit an application to transfer of ownership of the current Marketing Authorization to the Company or LNHC. Upon transfer, Company or LNHC shall maintain the Marketing Authorization in the Territory during the Term of this Agreement. The Company shall use its commercially reasonable efforts to assist Ferrer in the transfer of ownership of the Marketing Authorization providing any necessary documentation and other information in order for Ferrer to secure the transfer of such Marketing Authorization to Company or LNHC.
- 4.2 If additional investigations and studies are required by the Regulatory Authorities in the Territory, the Parties shall jointly analyse the situation and develop a plan to implement such investigations or studies. The costs of such investigations or studies shall be discussed in good faith and mutually agreed upon by the parties, and all clinical and scientific information arising out of such additional investigations and studies shall be the property of Ferrer and become part of the dossier. Once the Marketing Authorization has been effectively transferred to the Company or its Affiliate, the Company or its Affiliate shall have sole responsibility for maintaining it and shall assume any related fees and costs, including the applicable PDUFA fees (Prescription Drug User Fee Act).

- 4.3 Ferrer will be responsible to provide to Company or its Affiliate a complete copy of the current Marketing Authorization for End Product in the Territory, including all files, data, documents, correspondence, submissions, supplements, and any other records, letters, or correspondence pertaining to interactions with the Regulatory Authority in the Territory and that is needed to maintain the Marketing Authorization and for the commercialization of the Substance or End Product. Such regulatory documentation shall be provided in an appropriate electronic format, where available. Ferrer shall provide the Company or its Affiliate, in a timely manner, all information in Ferrer's possession or control concerning the Substance which is reasonably requested by the Company or its Affiliate, and which is reasonably necessary to meet the Company's or its Affiliate's regulatory obligations. Ferrer shall provide the Company or its Affiliate appropriate documentation authorizing the Company or its Affiliate to reference any Drug Master File for API and shall file such letter in the Drug Master File held by the Regulatory Authority in the Territory. Ferrer shall maintain the Drug Master File with the applicable Regulatory Authority in the Territory and shall ensure its "active status" is maintained and shall take reasonable efforts to defend the information in the Drug Master File in order to permit the Company or its Affiliate to maintain Marketing Authorization for the End Product in the Territory. The Parties shall promptly notify each other of any request by the Regulatory Authority in the Territory for samples of Substance or manufacturing batch records or any other information related to Substance.
- 4.4 The Company or its Affiliate shall immediately inform Ferrer of all decisions taken by the Regulatory Authorities relating to the End Products and/or the Marketing Authorization. Additionally, all communications regarding the Regulatory Approvals and the Marketing Authorization (excluding routine correspondence related to the general maintenance of such Marketing Authorization) received from or sent to by the Company or its Affiliate shall be forwarded to Ferrer within [***] from reception or sending.
- 4.5 **Company's Pharmacovigilance Responsibilities.** The Company's responsibilities for the End Product, which may be conducted by an Affiliate, include (i) receiving and processing all adverse experience reports with respect to the End Product, which reports will be processed in accordance with the Company's standard operating procedures; (ii) obtaining follow-up information for all post-marketing adverse experience reports; (iii) regulatory and safety contacts with Regulatory Authorities in the Territory; (iv) production and submission of post-marketing periodic safety update reports to Regulatory Authorities in the Territory; and (v) production and maintenance of risk management plans, if applicable. Ferrer's responsibilities include (x) owning and holding the global safety database; (y) ongoing safety signal detection for products including the Substance; and (z) providing information and data in a timely manner to facilitate submission of reports by the Company or its Affiliate to Regulatory Authorities in the Territory.

Article 5 – SUBSTANCE SUPPLY PRICE

- 5.1 During the term of this Agreement, Interquim shall manufacture and supply to the Company, and the Company shall purchase all its requirements of API exclusively from Interquim (or its appointee). The Company (or its appointee) will manufacture and sell or cause to be manufactured and sold the End Products. For each delivery of Substance, the Company shall pay to Interquim a supply price which is indicated in Annex 1. Interquim shall have the right to suspend the performance of its obligations under this Agreement in the event any invoice issued by Interquim to the Company is not satisfied by the Company according to the terms and conditions of this Agreement. The Company shall place each order for the Substance by issuing to Interquim a firm purchase order in writing at least [***] prior to the first desired delivery date and in accordance with forecasting obligations under Section 6.1. Each purchase order shall be in the form stated in Section 6.4 and shall require Interquim's express written approval.
- 5.2 Ferrer shall not subcontract any of its obligations hereunder (including to an Affiliate or Third Party), including any obligations to manufacture (including testing and supply of) the Substance, without the prior written consent of Company (in its sole discretion and which may be withdrawn at any time). With respect to any subcontracting permitted through this Agreement the signing Party shall remain fully responsible and liable for all obligations hereunder, and fully guarantees and warrants the related performance (in accordance with this Agreement) of any responsibilities so subcontracted and assumes full vicarious liability for any subcontractor performing any such obligations. Without limiting the foregoing, the subcontracting Party shall cause any and all such subcontractors (whether Affiliates or Third Parties) to comply with the terms and conditions of this Agreement (including with respect to any and all audit and inspection rights of the correspondent Party), and such subcontractors shall be so bound in writing.

- 5.3 For each delivery of Substance, Interquim shall send an invoice to the address given by the Company on the purchase order, stating the amount due (including any applicable VAT). The Company shall pay to Interquim the total undisputed amounts stated in Interquim's invoice by bank transfer within [***] from the maximum date in which the Company has confirmed the Substance delivered pursuant to such purchase order strictly complies with all applicable requirements set forth in this Agreement (in any case, such a date shall not be later than [***] from the invoice issuance date), Co with such payment to be made to the following Interquim bank account:

Name: Interquim S.A.

Bank: [***]

IBAN: [***]

SWIFT-BIC: [***]

- 5.4 **Upfront Purchase.** Promptly after the Effective Date, the Parties shall execute a purchase order for the initial supply from Interquim to the Company of [***] at a price of [***] (the "Upfront Purchase"). For clarity, the Upfront Purchase is not subject to Sections 6.1 and 6.4 and, notwithstanding anything to the contrary in this Agreement, the Upfront Purchase shall be delivered to Company in accordance with Section 6.8 and Section 7.4 within [***] of the Effective Date.
- 5.5 **Additional Purchase Obligation.** If the Company does not terminate this Agreement pursuant to Section 13.4, then after the [***] anniversary of the Effective Date, the Company shall immediately purchase the greater of (a) [***] kilograms of API and (b) the Company's actual requirements of API for the next [***].

Article 6 – Forecasting, Orders and Delivery

- 6.1 **Forecast.** In order to enable Interquim to deliver all the purchase orders within the agreed time, the Company will give Interquim an initial [***] forecast of its requirements of Substance that the Company estimates for such [***] month period. Thereafter, on a monthly basis, the Company will give to Interquim an updated [***] forecast of its requirements of Substance that the Company estimates for such [***] period. For any [***] forecast, the first [***] of such forecast will be binding on the Company. The Company shall submit to Interquim purchase orders for the quantities of Substance required by the Company, as specified in the binding forecasted period. Interquim shall be obligated to manufacture and supply to the Company any quantities of Substance that are not in excess of the quantity forecast and shall use its commercially reasonable efforts to manufacture and supply to the Company any quantities of Substance required pursuant to its purchase orders, including up to [***] of the quantity forecasted.

- 6.2 After the end of each contractual year and any subsequent year, the Company will submit a report stating its consumption of Substance realized in the preceding year.
- 6.3 **Minimum Order Quantities.** The Company shall submit purchase orders in writing equivalent to the Minimum Order Quantities (or multiples thereof) as stated in Annex 1.

Interquim shall make its best reasonable efforts to accept orders for quantities smaller than the respective Minimum Order Quantities or multiples of such (e.g. by combining them with orders from other clients in order to meet the required Minimum Order Quantities) (such order a “**Short Order**”). However, the Parties agree that Interquim’s delivery lead time shall not apply to such Short Orders and that the Parties will agree in writing to the delivery lead times applicable to such Short Orders on a case by case basis.

- 6.4 **Confirmation of purchase orders.** Each purchase order shall be in writing, and shall specify the quantity ordered, the price, the place of delivery and the delivery date, which shall be at least [***] after the confirmation by Interquim of such purchase order. Notwithstanding the indicated lead time, Interquim shall perform its best efforts in order to deliver within [***] after the confirmation by Interquim of such purchase order. Interquim shall, within [***] of receipt of a purchase order, accept such order and confirm to the Company the delivery date, provided that:
- a) with such purchase order, the Company is not exceeding the quantities forecasted according to the last forecast.
 - b) the ordered quantities are in line with the applicable Minimum Order Quantities or multiples thereof, as stated in Annex 1.
 - c) the order is placed with the agreed Supply Price.

For the avoidance of doubt, no purchase order shall be deemed accepted unless express confirmation in writing by Interquim to the Company (provided that Interquim shall do its best efforts to accept all purchase orders that comply with the terms and conditions set forth in this Section 6.4).

- 6.5 **Changes of confirmed purchase orders.** Interquim shall be free to accept or reject changes in already confirmed purchase orders (e.g. quantities). Where Interquim accepts such changes in already confirmed purchase orders, changes in already confirmed orders may be considered by Interquim as new orders subject to new delivery times.

- 6.6 **Cancellation of confirmed purchase orders.** The Company acknowledges that a confirmed purchase order is a binding agreement subject to the terms and conditions of this Agreement.
- 6.7 The terms and conditions of this Agreement shall prevail over any terms and conditions contained in any purchase order.
- 6.8 **Delivery.** Delivery of Substance to the Company or its Affiliate or appointee shall be made DAP (Incoterms 2020). With each delivery of Substance, Interquim shall provide to the Company the delivery documents agreed with the Company. It shall be deemed that Interquim has delivered and transferred the risk of loss of the Substance as per the agreed Incoterm.
- 6.9 The Company shall follow proper use, handling, storage, inspection, maintenance and disposal practices with respect to Substance and in compliance with the applicable legal requirements and standards. The Company also undertakes to observe all precautions and instructions provided in writing by Interquim.
- 6.10 If for any reason not attributable to Interquim, the Company or its Affiliate instructs Interquim not to ship the Substance already manufactured or otherwise refuses to take delivery of shipped Substance or refuses that Interquim ships any Substance shipment manufactured by Interquim (pursuant to a Company's confirmed purchase order), Interquim in addition to its other rights shall be entitled to charge a storage, handling and retention charges from the Company on account of such refusal.
- 6.11 **Delay or Failure to Supply.**
- a) Ferrer acknowledges the importance to the Company of an uninterrupted supply chain. Ferrer has taken steps, and throughout the Term shall take steps, to identify potential threats to its business and to implement a written and tested business continuity plan designed to maintain continuity of the enterprise under adverse conditions. Ferrer shall do its best efforts to promptly (and in any event within [***) notify the Company in writing of any such potential threats that Ferrer identifies (only if it is aware of such potential threat), including, but not limited to, if Ferrer has reason to believe that it will be unable to deliver to the Company the full quantity of Substance forecasted to be ordered or actually ordered by Company. Upon request, Ferrer will provide a copy of its written business continuity plan to Company, and the Parties shall meet to resolve how to thereafter supply the Substance in a timely manner.

- b) Without limiting the foregoing or any other rights or remedies of the Company, if the Company at any time determines, in its sole discretion, that there is, or is reasonably likely to be (based on written materials or other information known by the Company and shared with Ferrer), a supply failure, then the Company shall have the right (but shall not be obligated) to manufacture (or have manufactured by an Affiliate or Third Party) the Substance as affected by such supply failure.
- c) In the event of a supply failure, Ferrer shall exercise diligent efforts to resume production as quickly as possible and shall notify the Company in writing upon resumption of production, whereupon it shall supply the Company with any modified requirements for the Substance as the Company may determine for the remaining Term.
- d) In the event of a supply failure, the Company shall have the right (at the Company's option) to (i) either reduce or withhold its payments to Ferrer for any affected quantities of Substance not delivered or not meeting the applicable Specifications, (ii) receive a refund or credit from Ferrer for any amounts previously paid with respect to such non-delivered or non-conforming Substance, and (iii) cancel (or modify), without penalty, the forecasts and purchase orders for Substance upon written notice to Ferrer. In addition to the foregoing remedies, Ferrer shall pay to the Company a penalty equal to [***] of the purchase price for any Substance from the Upfront Purchase not timely delivered or non-conforming. The remedies in this Section shall be in addition to any other remedies available to the Company under this Agreement or at Law.

Article 7 – Manufacture and Quality

- 7.1 With respect to each shipment of Substance, Interquim shall provide the Company or its Affiliate with a certificate from Interquim's quality assurance department that: (i) includes the results of quality control testing, including applicable analytical testing, in accordance with the Specifications; and (ii) indicates that Substance contained in such shipment (a) meets the Specifications (or shall list any confirmed deviations from the applicable Specifications), and (b) has been manufactured in compliance with this Agreement, the Specifications, the production process described in the Marketing Authorization and Drug Master File (the "**Production Process**"), and the applicable Quality Agreement. Interquim will use its established GMP/cGMP systems, registered, approved and certified by EMA (European medicines agency) and FDA (US Food and Drug Administration) to manufacture the Substance. Such certificate shall also include the lot number(s), the location of manufacture, date of manufacture and either a re-test date or expiry date for such shipment of Substance, as applicable.

7.2 Quality.

- a) Prior to receiving API, Ferrer and the Company or its Affiliate shall enter into an agreement setting forth the API Specifications and each Parties' responsibilities with respect to cGMPs, certain technical and logistical matters related to manufacturing, packaging, storage and quality control and assurance (the "**Quality Agreement**"). In the event of a conflict between this Agreement and the Quality Agreement, the terms of the Quality Agreement shall prevail for matters of quality only and this Agreement shall prevail for all other matters, including business, legal, and financial issues.
- b) With respect to each shipment of API, Interquim shall provide the Company or its Affiliate with a certificate from Interquim's quality assurance department that: (i) includes the results of quality control testing, including applicable analytical testing, in accordance with the Quality Agreement; and (ii) indicates that API contained in such shipment (A) meets the API Specifications, and (B) has been manufactured in compliance with this Agreement and the Quality Agreement. Interquim will manufacture the API using its established cGMP systems, registered, approved and certified by the FDA (US Food and Drug Administration) and any other applicable Regulatory Authority at the time of manufacture. Such certificate shall also include the lot number(s), the location of manufacture, date of manufacture and either a re-test date or expiry date for such shipment of API, as applicable.

7.3 Change Requests.

- a) Ferrer shall not amend, change or supplement any of the following without the Company's prior written consent (in its sole discretion) except in accordance with the Quality Agreement: (i) the End Product Specifications; (ii) the API; (iii) the API Specifications; (iv) except as expressly permitted under this Agreement, the source of the API; (v) the test methods used in connection with the manufacturing of the End Product or API; (vi) the process for manufacturing the End Product or API; (vii) any test methods used in release of Product and/or API; and/or (viii) the Drug Master File for API filed with the Regulatory Authority in the Territory. Ferrer shall ensure that any change in any of the foregoing shall, in each case, complies with the Quality Agreement, cGMPs and all other applicable Laws, and should be made in accordance with the remainder of this Section 7.3 (each a "**Quality Change**").

- b) **Required Manufacturing Changes.** Each Party shall give the other Party prompt written notice prior to any changes to the End Product Specifications or API Specifications, process of manufacturing, or other change contemplated by this Section 7.3, with respect to the End Product or API which is manufactured hereunder, in each case that are required by a Regulatory Authority, cGMPs, or applicable Laws (collectively, “**Required Manufacturing Changes**” and, together with “**Quality Changes**”, the “**Permitted Changes**”). The Parties shall use commercially reasonable efforts to promptly implement such Required Manufacturing Changes. The Parties shall ensure that any change in any of the foregoing shall, in each case, comply with cGMPs and all other applicable Laws, and should be made in accordance with the remainder of this Section 7.3.
- c) Notwithstanding Sections 7.3(a) and (b), in the event that Ferrer makes a Permitted Change, until such time as Ferrer has obtained all regulatory approvals for the applicable Permitted Change and has fully implemented such Permitted Change, Ferrer shall continue to supply API to Company in accordance with the then-current API Specifications; provided that no Regulatory Authority has objected to or otherwise prohibited such continued API manufacture and supply.
- d) Ferrer shall reasonably provide to the Company or its Affiliate supporting data and other information in order to permit Company to amend its (or its Affiliate’s or designee’s, as applicable) Health Registration to reflect changes to the End Product Specifications or the process for the manufacturing of the End Product (or other change contemplated by this Section 7.3, as applicable) undertaken in accordance with this Section 7.3 and shall otherwise cooperate in good faith with Company or its Affiliate to comply with all regulatory obligations arising out of such changes.

- e) The costs of implementing any of the changes referred to in this Section 7.3 shall be shared by the Parties as follows: (i) costs of implementing changes proposed by Ferrer that are not required by applicable Law, shall be borne solely by Ferrer; (ii) costs of implementing changes proposed by the Company that are not required by applicable Law, shall be shared by the Parties in amounts to be agreed by the Parties prior to implementing any such changes; (iii) costs imposed on the Company resulting from Ferrer's delay or failure to supply API as set forth in Section 6.11 shall be shared equally by the Parties; and (iv) costs of implementing Required Manufacturing Changes, shall be shared by the Parties in amounts to be agreed by the Parties prior to implementing any such changes; provided that, when amounts are to be shared by the Parties, the Parties shall, as expeditiously as possible, agree upon a written budget for, and allocation of the responsibility for, the costs of implementing such changes prior to undertaking such change (and, for clarity, none of the Parties shall be obligated to reimburse the other Party for any costs which are not in accordance with such budget). In all cases when the Parties are sharing costs of any such changes, either Party will use commercially reasonable efforts to minimize the costs associated therewith.
 - f) The Parties shall cooperate in good faith to design a plan to resolve any API supply issues that may result from the changes contemplated by this Section 7.3. Without limiting the foregoing, to the extent any changes contemplated by the foregoing provisions of this Section 7.3 require regulatory approval or changes to regulatory approvals, Interquim shall continue to supply API to Company or its Affiliate or appointee in accordance with this Agreement based on the unchanged API Specifications or manufacturing process, as applicable, until all applicable regulatory approvals have been obtained or amended, unless otherwise agreed to by the Company in writing (in its sole discretion).
- 7.4 The Company or its Affiliate shall have the right, within [***] after receipt of each delivery of Substance, to analyze or have analyzed samples of the same in order to verify whether the delivery all delivered Substance complies with this Agreement, the applicable purchase order, the Specifications, and has no damage, defects, shortage, or does not have the minimum required shelf life (with such shelf life in all cases being no less than [***] from the date of delivery to the Company) (any such non-compliant Substance, "**Defective Substance**"). If, in Company's or its Affiliate's reasonable and duly justified opinion, such analysis reveals that any delivery has Defective Substance, the Company or its Affiliate will, within [***] upon receipt of such sample analysis, notify Interquim. If no notice is received by Interquim within [***] after any delivery of the Substance, such delivery shall be deemed correctly accepted by the Company.

In the event of a conflict between this Agreement and the Quality Agreement, the terms of the Quality Agreement shall prevail for matters of quality only and this Agreement shall prevail for all other matters, including business, legal, and financial issues.

- 7.5 In the event a given delivery of Substance is a Defective Substance, the Company or its Affiliate shall use commercially reasonable efforts to dispose of the Defective Substance in accordance with Interquim's reasonable instructions at Interquim's cost and expense. Interquim shall promptly replace at Interquim's own cost the quantities of Defective Substance by a new delivery of Substance meeting the agreed quality standards within [***] of the Company's notice of such defect; provided that the Company allows Interquim a reasonable period of time in which to evaluate the defect and Interquim agrees that such delivery of Substance is Defective Substance. Notwithstanding the foregoing, delivery of Defective Substance shall be considered a delay or failure to supply under Section 6.11.

If Interquim disputes that the Substance is Defective Substance, the disputed facts shall be finally determined by a mutually acceptable expert. In that case Interquim and the Company shall submit to the expert a sufficient number of samples of each production batch of such Substance for analysis. Such expert shall be chosen by the Parties within [***] upon request by either Party. The fees and expenses of such expert who shall act as an expert and not as an arbitrator shall be borne by the Party against which the expert's decision is given. The expert's decision will be definitive (absent manifest errors or gross negligence of such expert in assessing the matter).

- 7.6 Whenever a recall of the Substance and/or the End Product in the Territory is being contemplated for any reason, each Party shall, without prejudice to its obligations under any applicable Law in the Territory, promptly consult with the other Party with the view to deciding the appropriate action to take with respect thereto. Without derogating from the foregoing, the Company or its Affiliate shall have the sole right to institute any recall and/or withdrawal of the Substance and/or End Product in the Territory and sole control over any such recall or withdrawal; provided that such recall or withdrawal is not in conflict with any requirements of any Regulatory Authority or applicable Law.

The costs and expenses directly related to any recall and/or withdrawal of the Substance which is primarily due to acts or omissions on the part of the Company shall be borne by the Company. The costs and expenses directly related to any recall and/or withdrawal of the Substance which is primarily due to acts or omissions on the part of Interquim (including due to any Defective Substance) shall be borne by Interquim. Costs and expenses directly related to any recall and/or withdrawal of the Substance or End Product which is primarily due to governmental or regulatory act or intervention or to causes independent of the Parties and the manufacturing processes shall be equally shared by Interquim and the Company.

Article 8 – Warranties

- 8.1 Each Party (“**Representing and Warranting Party**”) represents and warrants to the other Party that as of the date hereof and of the Effective Date of this Agreement:
- a) The Representing and Warranting Party is a company duly organized, existing and in good standing, under the laws of its country of registration, as indicated in the beginning of this Agreement.
 - b) The Representing and Warranting Party has full legal and corporate power and authority to enter into and perform this Agreement. This Agreement has been duly executed and delivered by duly authorized signatories of the Representing and Warranting Party. This Agreement is a valid and binding obligation of the Representing and Warranting Party, enforceable against the Representing and Warranting Party in accordance with its respective terms.
 - c) The Representing and Warranting Party and its activities under this Agreement, will be in compliance in all respects with any and all applicable Law (statutory, judicial or otherwise), ordinances, regulations, judgments, orders, directives, injunctions, writs, decrees or awards of any governmental authority, valid in the Territory.
 - d) Except as otherwise provided in this Agreement, no consent, authorization, order or approval of, or filing or registration with, any governmental authority or other Person is required for the execution and delivery by the Representing and Warranting Party of this Agreement and the consummation by the Representing and Warranting Party of the transaction contemplated by this Agreement.

- e) Neither the execution and delivery of this Agreement by the Representing and Warranting Party, as the case may be, nor the consummation by the Representing and Warranting Party of the transaction contemplated, will conflict with or result in a breach of any of the terms, conditions or provisions of any governing or charter document, or of any statute or administrative regulation, or of any order, writ, injunction, judgment or decree of any court or governmental authority or of any arbitration award or any agreement binding upon the Representing and Warranting Party or its assets.
- f) The Representing and Warranting Party is not a party to any unexpired, undischarged or unsatisfied written or oral contract, agreement, indenture, mortgage, debenture, note or other instrument under the terms of which performance by the Representing and Warranting Party according to the terms of this Agreement will be a default, or whereby timely performance by the Representing and Warranting Party according to the terms of this Agreement may be prohibited, prevented or delayed.
- g) There is no action or proceeding pending or, to the knowledge of the Representing and Warranting Party, threatened against the Representing and Warranting Party before any court, arbitrator, administrative agency or other tribunal which could have a material adverse impact upon the Representing and Warranting Party's right, power and authority to enter into this Agreement, to receive the rights granted to the Representing and Warranting Party, to grant the rights granted to the other Party or to otherwise carry out its obligations.

8.2 Ferrer and/or Interquim (as applicable) represent and warrant to Company that as of the Effective Date of this Agreement:

- a) At the time of Delivery of Substance, all of such Substance: (i) have been manufactured, stored and shipped in accordance with cGMPs and all other applicable Laws, the Production Processes, the Specifications and the applicable Quality Agreement; (ii) are not adulterated or misbranded under any applicable Laws; (iii) conform in all respects to the Specifications for such Substance; (iv) are not an article which may not, under any applicable Laws, be introduced into interstate commerce; and (v) be in good, usable and merchantable condition and fit for its intended purpose in End Products.

- b) Interquim has the appropriate skills, personnel, equipment, permits, and approvals necessary or useful to perform its obligations under this Agreement in compliance with applicable Laws (including cGMPs).
- c) To the best of its knowledge, it owns or has the right to use all Intellectual Property Rights necessary or useful to Exploit the Substance and the End Product as contemplated by this Agreement, and to otherwise carry out its activities hereunder, and to the best of its knowledge, (i) such Intellectual Property Rights do not infringe or misappropriate the Intellectual Property Rights of any Third Party and (ii) no Third Party is infringing or misappropriating its Intellectual Property Rights.
- d) Ferrer has provided Company with a true and correct copy of the Toyama License, and the Toyama License has a current expiration date of at least [***] from the Company's launch in the Territory. The Toyama License is in full force and effect in accordance with its terms, and Ferrer shall do its best efforts to keep the Toyama License in full force and effect for the duration of the license. The only in-license relevant to the Exploitation of the End Products as of the Effective Date is the Toyama License.
- e) Ferrer is not in breach of and will not intentionally breach or terminate or allow intentionally the expiration of the Toyama License without cause. In the event that Ferrer receives notice of breach or termination or expiration of the Toyama License or otherwise receives any information indicating that the Toyama License may be terminated or expire, Ferrer will promptly notify the Company of such notice or information. In the event of any such breach, Company shall provide all reasonable cooperation and assistance in connection with such breach if required by Ferrer in order to cure the breach and Ferrer will permit the Company to step in and cure such breach on Ferrer's behalf if requested by the Company and accepted by Toyama. If the Toyama License is terminated for any reason or expires, Ferrer shall use reasonable efforts to cause the licensor(s) thereunder to grant a direct license under the licensed Intellectual Property Rights to the Company containing similar terms and conditions.
- f) After giving effect to this Agreement, there exist no breaches, defaults or events which would (with the giving of notice, the passage of time or both) give rise to a breach, default or other right to terminate or modify the Toyama License. Ferrer has not transferred or granted, and Ferrer shall not transfer or grant, to any other Person any license or other interest in the Toyama License that would conflict with the rights and licenses granted to Company herein. Without limiting the foregoing, Ferrer has obtained prior to the Effective Date such consents as may be required by the Toyama License to grant the rights to Company purported to be granted in this Agreement, in the form and substance acceptable to Company.

- g) It has the right to grant the licenses and other rights purported to be granted herein and has not granted to any Third Party any license or other interest in the Intellectual Property Rights (i) for the Exploitation of the End Products within the Territory or (ii) that would conflict with the licenses and interests granted to Company hereunder.
 - h) It shall not conduct any development work, research, or other activities intended to create, or that result in the creation of, any Improvements, and shall not claim any rights in or to any such Improvements.
 - i) Neither Ferrer, nor any officer nor director, nor, to their knowledge, employee nor agent thereof: (a) has been charged with or convicted of any criminal offense relating to the delivery of an item or service under any U.S. federal health care program, or (b) has been debarred, excluded or suspended under any Laws pertaining to the API or End Product. In the event of any such debarment, exclusion or suspension, Company may immediately terminate this Agreement (without payment by Company of any penalty or damages or further performance by Company of any kind) and Company may refuse delivery of any goods, technology or services regardless of any existing contractual obligation.
- 8.3 THE WARRANTIES SET OUT ABOVE ARE THE ONLY WARRANTIES GIVEN BY FERRER AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. ANY EXPRESS, IMPLIED, STATUTORY OR OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AS APPLICABLE TO THE SUBSTANCE AND/OR TO THE END PRODUCT ARE HEREBY EXCLUDED INCLUDING ANY CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE TO GOODWIL OR LOSS OF MARKET SHARE, EXISTING OR PROSPECTIVE.

Article 9 – Indemnification

- 9.1 Except as otherwise specifically provided for in this Agreement, Ferrer and/or Interquim (as applicable) shall indemnify, compensate and hold harmless the Company and its respective directors, officers and employees from and against any third party claim, action, liability, loss, damages, costs and expenses (including reasonable attorneys' fees) (hereinafter collectively referred to as "**Damages**"), incurred by or rendered against the Company arising, directly or indirectly, from any of (i) Ferrer and/or Interquim's breach of this Agreement; (ii) wilful misconduct or negligence of Ferrer and/or Interquim; (iii) failure of the Substance to satisfy the representations, warranties or covenants in Article 8; (iv) breach of Ferrer and/or Interquim's representations, warranties or covenants in Article 8; (v) Ferrer and/or Interquim's breach of any statutory/legal obligations; or (vi) any infringement, alleged infringement, misappropriation or alleged misappropriation of any Intellectual Property Rights of a Third Party as a result of (a) by Ferrer and/or Interquim in the country of manufacturing of Ferrer and/or Interquim (i.e. Spain) or (b) the Company's use of any Ferrer Trademarks; ; in each case, except to the extent such Damages result from matters contemplated in Section 9.2.
- 9.2 Except as otherwise specifically provided for in this Agreement, the Company shall indemnify, compensate and hold harmless Ferrer and their respective directors, officers and employees from any Damages incurred by or rendered against Interquim or any of its directors, officers and employees which result from or arise out of either (i) the negligence or willful misconduct of the Company; (ii) Company's breach of this Agreement or any individual purchase order; (iii) Company's breach of any statutory/legal obligations; or (iv) any injury or death of any person, and loss of or damage to property in any way caused by the promotion, use or sale of End Products by the Company; in each case, except to the extent such Damages result from matters contemplated in Section 9.1.
- 9.3 Each Party shall notify the other Party of any claim, action or demand being made against the notifying Party in respect of any matter for which the other Party is or may be liable hereunder ("**Indemnity Claim**"). The Parties agree to render each other reasonable assistance in the defense of any claim, action or demand made hereunder.
- 9.4 For the avoidance of doubt, neither Party shall be liable to the other Party and/or its respective directors, officers and employees for all and any: loss of business earnings, loss of anticipated sales, loss of profits, loss of the chance to make profit, loss of reputation or goodwill, loss of data or documentation, loss of opportunity, punitive damages, indirect, special or consequential damages, except in case of gross negligence or willful misconduct.

Article 10 – Confidentiality

- 10.1 Confidentiality of information disclosed by or on behalf of one of the Parties hereto or any of its Affiliates (the “**Disclosing Party**”) to the other Party or any of its Affiliates (the “**Receiving Party**”) is governed by this Article 10.
- 10.2 All information, data and documents regarding the Substance, the End Products, and any other information, data, and documents disclosed by the Disclosing Party to the Receiving Party relating to the Disclosing Party’s business pursuant to or in connection with this Agreement which is marked or not as “confidential” or the like or which should be reasonably understood to be confidential (the “**Confidential Information**”) is deemed strictly secret and confidential.

Unless any written consent by the Disclosing Party or written agreement between the Parties provides otherwise, the Receiving Party must treat such Confidential Information as it would treat its own proprietary information, but shall apply in any event at least such degree of care as a diligent person would. The Receiving Party may not divulge or otherwise disclose such Confidential Information to any third party. The Receiving Party undertakes and ensures that such Confidential Information is not used for any purpose other than that set forth in this Agreement.

Confidential Information shall not include any information, data and documents that, as evidenced by competent proof:

- a) Is generally known to the public at the time of, or after disclosure hereunder becomes generally known to the public through no breach of this Agreement by or any fault of the Receiving Party, or
- b) Was already known to the Receiving Party or any of its Affiliates prior to disclosure by the Disclosing Party, as evidenced by means generally accepted in law, provided that such information, data or documents was not acquired/obtained directly or indirectly from the Disclosing Party or any of its Affiliates; or
- c) Was or is provided in good faith to the Receiving Party or any of its Affiliates by an independent third party, provided that such third party had lawfully acquired/obtained the information, data or documents and has the lawful right to disclose it, as evidenced by means generally accepted in law; or

- d) Was or is developed by or for the Receiving Party or any of its Affiliates independently of, and without reference to, any of the Confidential Information, as evidenced by means generally accepted in law.
- 10.3 The Parties may disclose, on a need-to-know basis, Confidential Information to their respective Affiliates, officers, directors, employees, consultants, and those of their respective Affiliates (“**Related Parties**”) and, the Company or any of its Affiliates, in addition may also disclose (having informed Interquim in advance) Confidential Information to Regulatory Authorities provided that (i) each Party shall be liable to the other for the non-fulfillment of such Related Parties’ confidentiality obligations and (ii) further provided that such Related Parties are bound by confidentiality and non-use obligations materially not less stringent than those set forth by this Article 10, which confidentiality and non-use obligations shall remain in force during the term this Agreement is in effect and thereafter, for as long as the Confidential Information is not part of the public domain by reasons other than by unauthorized act or omission by any Party (including its Affiliates and Related Parties).
- Likewise, the Parties may disclose Confidential Information in court or administrative proceedings if such disclosure is necessary or useful to defend or pursue the respective action or administrative proceeding.
- 10.4 If the Receiving Party is required to disclose Confidential Information by an order of a competent court or administrative agency or by law, the Receiving Party shall be permitted to disclose Confidential Information to the extent required; provided, however, that the Receiving Party shall provide the Disclosing Party with notice of its intent to disclose such information in order to provide the Disclosing Party with the opportunity to safeguard such information. In the event that it is not possible to prevent such disclosure or the disclosure is not prevented for any reason whatsoever, the Receiving Party undertakes to disclose only that portion of the Confidential Information that is legally required to be disclosed.
- 10.5 Any Confidential Information exchanged between the Parties prior to the Effective Date shall be treated as Confidential Information pursuant to this Article 10.

Article 11 – Intellectual Property Rights

- 11.1 Each Party shall retain all rights in Know-How, Intellectual Property Rights, and such Party's Confidential Information owned by such Party prior to this cooperation or developed independently during the duration of this Agreement ("**Background IP**").
- 11.2 It is Company's responsibility to evaluate and assess any possible intellectual property and similar rights of Third Parties (including patents, patent extensions - e.g. SPCs, PTEs, or PTAs - and any other intellectual property right) which may have the effect of preventing the import, use, possession, sale or distribution of the Substance and/or any End Product ("**Third Party Rights**") in the Territory and decide whether to launch or not.
- 11.3 Accordingly, should the Company decide to launch before the expiry of any Third Party Right in the Territory, the Company will do so at its own risk as to cost and consequences.
- 11.4 Company grants to Ferrer (or its designee) a sublicensable license to any Company Improvements (and all Intellectual Property Rights associated therewith) to use such Company Improvements solely for the purpose of Exploiting the End Products outside the Territory. The foregoing license is exclusive and royalty free in the following countries Japan, Korea, China and Taiwan, and non-exclusive and royalty-bearing (at a royalty rate to be mutually agreed upon by the Parties) in all other countries outside of the Territory.
- 11.5 **Technology Transfer.** Promptly following the Effective Date, and at any time thereafter within [***] of Company's or its Affiliate's request, Ferrer shall provide and deliver to Company (and/or an End Product CMO) copies and embodiments of all Know-How and any other Intellectual Property Rights related to the End Products, including all such Intellectual Property Rights relating to the manufacturing of the End Products that is reasonably necessary or useful for Company or its Affiliates (and any End Product CMOs) to Exploit the End Products. Without limiting the foregoing, Ferrer will provide all reasonably requested assistance and support to enable Company or its Affiliates (and any End Product CMOs) to receive and use such Intellectual Property Rights.

In addition, upon request of Company or its Affiliates, from time-to-time during the Term, Ferrer shall provide reasonable technical assistance to Company or its Affiliates (and any End Product CMO), including providing resources and promptly responding to Company's or its Affiliate's requests, with respect to Company's or its Affiliate's (and any End Product CMO's) receipt, adoption and establishment of the manufacturing process, including: (i) making available a reasonable number of appropriately trained personnel to provide, on a mutually convenient timetable, technical assistance with respect to such transfer; (ii) using commercially reasonable efforts to promptly assist Company or its Affiliates (and any End Product CMO) in obtaining all necessary regulatory approvals and/or modifying existing Health Registrations for the manufacture of the End Product by Company, its Affiliate and/or any End Product CMO; (iii) supplying analytical test methods and other testing know-how including method validation required to perform release testing or other testing as may be required by the applicable Governmental Authority; (iv) upon request by Company or its Affiliates, providing Company or its Affiliates (and any End Product CMO) with appropriate quantities of reference standards upon reasonable notice related to such End Product in order to facilitate its testing; and (v) providing all other information reasonably requested by Company or its Affiliates to address and respond to customer complaints, to perform analytical testing, to perform OOS, and to transfer eCTD files to Company's selected publisher.

- 11.6 The Parties shall keep each other informed, on a complete and timely basis, about any claims, demands, actions and/or suits (among others, but not limited to, filing of a complaint, the receipt of a letter alleging infringement or merely offering a patent license) against them, in or out of court, alleging infringement of Third Party Rights in the Territory ("**IP Claims**").
- 11.7 In the event that any Third Party makes or files an IP Claim against the Company and/or Interquim as a consequence of or derived from any activity carried out pursuant to this Agreement, Ferrer shall have the sole right to bring and control which of the Parties will take action with respect to such IP Claim or a common defence strategy. Both Parties shall cooperate fully, including, if required to bring such action, the furnishing of a power of attorney or being named as a party, at a sole's Ferrer discretion. Both Parties will give each other all reasonable assistance required and needed. The Company will promptly notify in writing to Ferrer the full particulars of the IP Claim and will provide Ferrer with all the relevant documentation related to such IP Claim. If the IP Claim in the Territory is also received by Interquim, Interquim will immediately notify the Company. The Company will not be entitled to settle, in or out of court, any IP Claim without having obtained the prior written approval of Ferrer, whose approval will not be unreasonably withheld or delayed.
- 11.8 **Trademarks.** Ferrer or its Affiliate shall file, prosecute, maintain, and renew the Ferrer Trademarks at its own costs and expense in the Territory during the term of this Agreement.

The Ferrer Trademarks are property of Ferrer and Ferrer shall retain the ownership of the entire right, title and interest in and to them subject only to the rights granted to the Company pursuant to this Agreement. For the sake of clarity, all Intellectual Property Rights in such Ferrer Trademarks shall remain property of Ferrer.

The Company will market, distribute, promote and sell the End Product under the Ferrer Trademarks in the Territory. The Company shall have the right to use the Ferrer Trademarks as may be required by applicable Laws (or as may otherwise be reasonably necessary), including in connection with obtaining and maintaining Health Registrations for the End Product or in connection with marketing and sale of the End Product. Ferrer and the Company agree to notify each other in writing of any known or suspected conflicting use of Ferrer Trademarks or, and the application for registration or use of trademarks confusingly similar to the Ferrer Trademarks thereto, or of any known or suspected infringements or of unfair competition involving the Ferrer Trademark in the Territory, promptly after it acquires knowledge thereof. The Parties shall immediately consult on how to further proceed. The final decision whether or not and, as the case may be, how to defend or settle such a claim or proceedings regarding the Ferrer Trademarks shall be at the sole discretion of Ferrer. At the reasonable request from Ferrer, the Company shall cooperate with Ferrer and render commercially reasonable assistance in the defense of the Ferrer Trademarks. Company shall notify in writing of any infringement by Third Parties, known or suspected, in the Territory. Upon the expiry or sooner termination of this Agreement, this license shall automatically terminate.

- 11.9 **Patent Prosecution.** As between the Parties, Ferrer shall have the sole right to prepare, file, prosecute and maintain the Patents during the term of this Agreement. Ferrer will use commercially reasonable efforts to prepare, file, prosecute, defend and maintain all Patents. Ferrer shall provide Company reasonable opportunity to review and comment on such prosecution efforts regarding the Patents required for obtaining or maintaining Marketing Authorization in the Territory as follows: Ferrer shall promptly provide Company with copies of all material communications from any patent authority in the Territory regarding the Patents, and shall provide Company, for its review and comment, with drafts of any material filings or responses to be made to such patent authorities in a reasonable amount of time in advance of submitting such filings or responses Ferrer shall consider in good faith comments thereto provided by Company in connection with the prosecution of the Patents, but shall have the sole right to take the final decisions. For the purpose of this Section 11.9, "prosecution" shall include any post-grant proceeding in the Territory, including opposition, post grant review, and inter partes review proceedings.

- 11.10 **Patent Enforcement.** If either Party becomes aware of any existing or threatened infringement of any Patent in the Territory (“Infringement”), it shall promptly notify the other Party in writing to that effect and the Parties will consult with each other regarding any actions to be taken with respect to such Infringement.

Each Party shall share with the other Party all Information available to it regarding such alleged Infringement, pursuant to a mutually agreeable “common interest agreement” executed by the Parties under which the Parties agree to their shared, mutual interest in the outcome of any suit to enforce the Patents against such Infringement at its own cost and expenses. Company shall have the first right, but not the obligation, to bring an appropriate suit or other action against any Person engaged in such Infringement. Ferrer shall cooperate in any such action (including joining as a party in any suit filed by Company if requested by Company) and shall have the right to join the action at a party at its own motion, in such case the Parties shall share the cost and expense of such enforcement action equally. If Company notifies Ferrer that it does not intend to commence a suit to enforce the applicable Patents against Infringement or to take other action to secure the abatement of such Infringement, then, to the extent that such Infringement is resulting from a Third Party’s use or sale of a product that competes with the End Products, Ferrer shall have the right, but not the obligation, to commence such a suit or take such action, at Ferrer’s cost and expense (provided that, if Company believes in good faith that the commencement of any such suit or action by Ferrer would reasonably be likely to have a negative impact on any similar action that Company is pursuing against such person or entity, then Ferrer shall not have the right to commence such suit or action without the consent of Company). In such case, Company shall take appropriate actions in order to enable Ferrer to commence a suit or take the actions set forth in the preceding sentence. Neither Party shall settle any such suit or action in any manner that would negatively impact the Patents or that would limit or restrict the ability of Company to Exploit the End Products in the Territory without the prior written consent of the other Party, consent which will not be unreasonably withheld or delayed.

- 11.11 **Recoveries.** If a Party recovers monetary damages in an Infringement claim, suit or action brought under Section 11.10, such recovery shall be allocated first to the reimbursement of any documented expenses incurred by such Party in such enforcement action, and any remaining amounts shall be retained by the Party or Parties bearing the cost and expense of such enforcement action. In the case that the Company bears the costs and expense, all Recoveries shall be considered as Net Sales in terms of the payment of royalties.

- 11.12 **Abandonment.** Ferrer shall not abandon or allow to lapse any Ferrer Technology (including Ferrer Patents and Ferrer Trademarks) without providing at least [***] prior notice to Company, and in such event Company shall have the right assume the prosecution and maintenance of the Ferrer Technology (including Ferrer Patents and Ferrer Trademarks) at its own cost in the name of Ferrer and, at Company's request, Ferrer will assign such Ferrer Technology (including Ferrer Patents and Ferrer Trademarks) to Company free of charge.

Article 12 – Audits

- 12.1 Interquim shall, while this Agreement is in force and upon [***] prior notice and informing within such period about the items to be examined, permit to the Company or its duly authorized representative/s or designated agent/s (such agents being reasonably acceptable to Interquim) and at any time any competent authority (e.g., FDA, EMA, etc.), to enter Interquim's production facility where the Substance is being manufactured, to inspect and audit such Interquim's production facility, the quality assurance procedures, the documentation and records, data, machinery, equipment and processes used or produced in the production, testing, quality control, quality assurance and dispatch of the Substance; provided, however, that the Quality Agreement shall supersede this Article 12 in the event of an audit for cause.
- 12.2 Either Party shall advise the other as soon as it is aware of that (but in no event less than [***] prior to a pre-notified or scheduled visit or inspection of its production facility) of any Regulatory Authority visit or inspection that relates to Substance distributed or used in the Territory, or any written or oral inquiries by any such Regulatory Authority concerning the Substance (including safety and efficacy claims). If such visit or inspection or inquiry is related to Substance distributed in the Territory, each of the Parties shall ensure that one or more representative(s) of the other (or its designees) is allowed to be present if requested by the corresponding Party. Interquim shall promptly (and in no event later than [***) furnish Company or its Affiliate summaries of all reports, documents and correspondence with respect to any Regulatory Authority inquiries, visits or inspections of its production facility for Substance or otherwise related to the Substance, as well as a copy of each report, document and correspondence issued by or provided to any Regulatory Authority in connection with such request, visit or inquiry. Interquim and Company or its Affiliate shall consult with one another in an effort to arrive at a mutually acceptable response to the extent related to Substance. Without limiting the foregoing, any of the Parties shall furnish to the other, (a) within [***] after receipt, any report or correspondence issued by a Regulatory Authority in connection with such visit, inspection or inquiry, including any FDA Form 483, Establishment Inspection Report, or warning letter, and (b) copies of any and all responses or explanations to any Regulatory Authority relating to items set forth above prior to the submission of such responses or explanations to any Regulatory Authority by Interquim.

Article 13 – Term and Termination

- 13.1 This Agreement shall enter into force on the Effective Date and shall continue in full force and effect for a period of [***] following the Launch Date of the End Product unless earlier terminated pursuant to the mutual agreement of the Parties or any provision hereof (“**Initial Term**”).

Upon the expiration of the Initial Term, this Agreement will automatically renew on an annual basis, unless the Company provides prior written notice of termination to Ferrer at least [***] before the end of then-current term.

Notwithstanding anything herein to the contrary, this Agreement will be automatically terminated concurrently with the termination of the Toyama License; provided that Ferrer shall use reasonable efforts to extend the term of the Toyama License and, if the Toyama License is not extended, then Ferrer shall use reasonable efforts to cause the licensor(s) thereunder to grant a direct license under the licensed Intellectual Property Rights to the Company containing terms and conditions no less favorable to the Company than the terms of the Toyama License, that is to say without taking into consideration Ferrer’s patents on the End Product, and in the event the Company obtains such a direct license then Ferrer’s and its Affiliates’ shall do its reasonable efforts to supply the Substance exclusively to the Company within the Territory and exclusive fields in accordance with the terms and conditions hereof shall survive and remain in full force and effect for the duration of any such direct license (and any amendment or replacement thereof).

- 13.2 The Company shall have the right to terminate immediately this Agreement in its entirety and for all countries of the Territory by means of a written notification to Ferrer in the event that Ferrer has committed a material breach of this Agreement. If Ferrer does not remedy such material breach within [***] of its notification, or if it does respond and the Company is not satisfied with the response or the proposed remedy, such termination shall be without prejudice to any right of indemnification which the Company may consider itself entitled to.

The Parties agree that the expression material breach shall include but not be limited to (i) the breach of Confidentiality obligations and (ii) the breach of Representations and Warranties.

- 13.3. The Company shall have the right to terminate this Agreement by giving a written notice thereof to the Ferrer if Ferrer applies for or consents to the appointment of a receiver, trustee or liquidator for all or a substantial part of its assets; admits in writing its inability to pay its debts generally as they mature; makes a general assignment for the benefit of creditors; is adjudicated a bankrupt; submits a petition or an answer seeking an arrangement with creditors; takes advantage of any insolvency law except as a creditor; submits an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding; has an order, judgment or decree entered by any court of competent jurisdiction approving a petition seeking reorganization of it or appointing a receiver, trustee or liquidator for it, or for all or a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for a period of [***]; files a voluntary petition of bankruptcy or fails to remove an involuntary petition in bankruptcy filed against it within [***] of the filing thereof.
- 13.4 Starting in the [***] after the Effective Date, the Company shall have the right to terminate this Agreement by giving [***] prior written notice thereof to Ferrer; provided that the Parties first meet and confer in good faith to discuss the continuation of this Agreement and explore commercially reasonable alternatives to termination.
- 13.5 The Company shall have the right to terminate this Agreement immediately upon notice to Ferrer if Ferrer fails to deliver the Upfront Purchase within [***] of the Effective Date.
- 13.6 Ferrer shall have the right to terminate this Agreement upon [***] prior written notice to Company only if Company materially breaches this Agreement and such breach remains uncured for [***] days if such material breach was caused by Company's gross negligence or willful misconduct.

13.7 Upon expiration or termination for any reason:

- a) All rights granted pursuant to this Agreement shall automatically terminate as from the date on which termination takes effect;
- b) The Company shall return free of charge to Ferrer all the granted Marketing Authorizations in the Territory or at Ferrer's option, apply for a variation of the relevant Marketing Authorization/s for any End Product in the Territory in order to exclude Interquim as authorized API manufacturer; and
- c) Unless the Company terminates this Agreement for cause, the Company shall purchase from Interquim at the applicable supply price set forth in this Agreement any of the relevant Substance already ordered by the Company and manufactured but not yet delivered by Interquim on the termination date; and
- d) Receiving Party shall return to the Disclosing Party, without retaining any copy in any format or means, the applicable Confidential Information, and refrain from using it for any purpose whatsoever, and refrain from allowing third parties to do so. In particular, the Company commits to return to Ferrer all Confidential Information under its possession, Ferrer Technology and/or any other information or documentation that may be owned by Ferrer or furnished by Ferrer.

13.8 Termination or expiration of this Agreement, for whatever reason, shall be without prejudice to any rights, claims or obligations of either Party which may have accrued prior to, or become due at the date of such termination.

Article 14 – Force Majeure

- 14.1 Neither Party to this Agreement will be liable to the other Party because of any delay or failure to perform its obligations hereunder, if and to the extent that such failure is due to a situation caused by an event beyond such Party's control and which, by the exercise of reasonable diligence and care, such Party could not reasonably have been expected to avoid, including, but not limited to, strikes, riots, wars, fire, acts in compliance with any applicable mandatory law, regulation or governmental order, any state thereof or any other domestic or foreign governmental body or instrument thereof having jurisdiction in the matter; provided however, (i) that such Party shall notify the other Party as promptly as reasonably possible should it become aware of such a situation, and (ii) that the other Party shall be entitled to terminate this Agreement if such force majeure event persists for more than [***], without any liability or monetary obligations on account of such termination.

Article 15 – General Terms

- 15.1 If any provision of this Agreement is held to be invalid, illegal or unenforceable, in any respect, the other provisions of this Agreement shall remain in full force and effect. Such invalid, illegal or unenforceable provision shall be substituted by such a valid clause which achieves, as nearly as possible, the original intention of both Parties.
- 15.2 Rights and obligations under this Agreement are *intuito personae*, therefore this Agreement may not be transferred or assigned, in whole or in part, by the Company without prior written permission of Interquim. Notwithstanding, either Party may assign or transfer this Agreement, in whole or in part, to any of its Affiliates notifying such fact to the other Party by written.
- Any permitted assignee shall assume all obligations and shall be entitled to all rights of the assigner under this Agreement. It is understood and agreed between the Parties that the Party who assigns this Agreement or any right or obligation hereunder shall (as long as it remains a surviving entity) be responsible on a joint and several basis of the fulfillment by the assignee of the provisions of this Agreement.
- 15.3 The relationship of the Parties under this Agreement is that of supplier and customer and each of them is an independent contractor. Accordingly, neither the making of this Agreement nor the performance of any of the provisions herein shall be construed to make either Party an agent, trustee, employee or legal representative of the other whether expressed or implied, nor shall this Agreement be construed as a joint venture, pooling, franchise, partnership or agency. Neither Party has any authority whatsoever to act as an agent or representative of the other in any manner, nor has either Party any authority or power to act, contract for, or create or assume any obligation or liability in the other's name or on behalf of the other or otherwise bind the other in any way for any purpose, nor shall either Party hereto represent to any third parties that it possesses any such authority to bind the other Party.
- 15.4 This Agreement, including its Annexes contain the entire agreement between the Parties regarding the subject matter hereof and supersede any and all prior understandings whether oral or in writing. Without limiting the foregoing, the Parties acknowledge and agree that this Agreement supersedes and replaces in its entirety that certain License and Supply Agreement by and between the Company (as successor in interest to Biofrontera Inc., as successor in interest to Biofrontera Newderm LLC, as successor in interest to Cutanea Life Sciences, Inc., as successor in interest to Medimetriks Pharmaceuticals, Inc.) and Ferrer dated March 10, 2014, as amended by that certain Amendment No. 1 dated March 5, 2018, which agreement is hereby terminated in its entirety and shall be of no further force or effect. Modifications to this Agreement will only be binding if made in writing and signed by duly authorized representatives of each Party.

- 15.5 None of the terms of this Agreement (including its Annexes) shall be deemed to be waived except by a written document drawn expressly for such purpose and executed by the Party against whom enforcement of such waiver is sought. Failure or delay of either Party hereto to enforce any of its rights under this Agreement shall not be deemed a continuing waiver by such Party of any of its rights under this Agreement.
- 15.6 This Agreement and any dispute thereof shall be interpreted and governed by the laws of New York, USA, excluding any conflicts or choice of law rule or principle that might otherwise refer to the substantive law of another jurisdiction. Any dispute that could arise from and/or in connection with this Agreement shall be referred to the exclusive jurisdiction and venue of the state and federal courts located in New York, New York, to the exclusion of any other Courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 15.7 All notices, notifications or other communication arising from, required or permitted in connection with this Agreement or the subject matter hereof of either of the Parties hereto will be made in writing and in English and will be deemed to be sufficiently served for all purposes hereof if sent by registered post, with acknowledgement of receipt, by facsimile, by registered air mail or by air courier addressed to the Party to be notified at the following addresses or to such other address that may be notified by either of the Parties in the future and given as herein required:

If to the Company:

Pelthos Therapeutics
4020 Stirrup Creek Dr, Suite 110
Durham, North Carolina 27703
Attn: [***]

If to Interquim:

Interquim S.A.
C/ Joan Buscallà 10,
E-08173 Sant Cugat del Vallès, Barcelona
Spain
Attn: [***]

- 15.8 **Compliance with Ferrer and Interquim Ethical Code for Third Parties.** Interquim as an Affiliate of Ferrer, is committed to make a positive impact on society and the environment and expects any third party that Interquim collaborates with to commit to the principles of integrity, sustainable development and to aim for the highest standards of our industry with respect to environment, quality, health and safety, as well as human rights and equality. In this sense, Company undertakes to read and comply, at any time, with the values and principles included in the “Ethical Code for Third Parties”, attached as [Annex 3](#) and also available in the following link [Ethics and compliance | Ferrer](#), and to be able to represent and warrant that the information provided to Interquim regarding compliance with the commitments thereby included is accurate and complete. Company also accepts Interquim’s right to monitor its activity and/or to audit documents, records and/or any facilities, directly or through an independent expert, to evidence compliance with the provisions included in such Code. The breach of the provisions of the “Ethical Code for Third Parties”, delay, opposition or negative for the performance of any of the above, will be considered a serious breach of its obligations and it may result in appropriate action, including termination of this Agreement.
- 15.9 **Anticorruption Compliance.** Each Party will prohibit conduct and will refrain from participating in activities that may be directly or indirectly related to practices of corruption, bribery, extortion, embezzlement, influence peddling, and/or fraud in any of its forms, within the framework of commercial relations such as with Public Administrations or governments. In this sense, each Party undertakes to read and comply, at all times, with the principles, behaviours and commitments included in any applicable legislation or anti-corruption Laws or regulations or any training provided by the other Party and guarantees that the information provided regarding its compliance is true and complete. Each Party will also be required to have mechanisms to identify and manage conflicts of interest in the most appropriate manner.
- Anticorruption Training.** Each Party may offer and provide training to the other Party’s managers and/or employees to ensure understanding and compliance with the principles and commitments included in relevant anti-corruption training in the Territory, such Party’s own equivalent regulations. and in any legislation that is applicable to the other Party regarding anti-corruption.

Each Party reserves the right to request from the other Party the relevant documentation in order to verify the completion of the training indicated above.

Ethics and Compliance Reporting System. In case of knowledge or suspicion of any breach of the “Third Party Code of Ethics”, or any improper conduct provided for in relevant and that may affect Interquim or its own or licensed products, the Company undertakes to inform and collaborate with Interquim in the investigation and resolution of any possible breach. For this purpose, the Company will use the channel provided by Interquim, which is available on its website: <https://www.Ferrer.com/en/form/etica-y-cumplimiento>. Interquim guarantees the confidentiality of the subjects involved in the investigation and the contents of the process.

- 15.10 **Trade Sanctions and Export Control Laws.** The Parties shall identify and comply with applicable trade sanction and export control laws, including regulations or trading sanctions or restrictions imposed, administered or enforced from time to time upon any country, individual or legal entity affecting the sale, exportation, importation, delivery or distribution of the Product commercialized within the scope of this Agreement, including any economic, financial or other trading sanctions or restrictions imposed, administered or enforced from time to time by one or more components of the U.S., the EU Government or the UN Security Council.

In this sense, the Company acknowledge and agrees:

- a) That strictly complies will all applicable national regulations for the control of import, export or transfer prior to any shipment of Products in the Territory, including but not limited the U.S and EU laws.
- b) That, directly or indirectly through subcontractors, nor their Affiliates, shareholders or directors have not conducted currently or within the past ten (10) years business with countries that are subject to trade embargoes and/or economic sanctions and/or have received or discovered any evidence suggesting a possible violation of regulations on control of import and export on of Product.
- c) That do not to provide any of the Products to any person (i) located or resident in any countries subject to U.S. comprehensive Sanctions, including Cuba, Iran, Syria, North Korea, and the Crimea Region of Ukraine or (ii) who has been or is designated on a trade controls-related list of restricted or blocked persons, including designation on the list of Specially Designated Nationals (“SDN”) and blocked persons from time to time.

- d) That are not currently owned fifty percent (50%) or more, by one or more SDN.
- e) That will collaborate with Interquim in conducting a due diligence prior any shipment of Products and will communicate truthful and complete information in a timely manner to Interquim.
- f) That guarantees that all necessary import and/or export licenses are obtained as may be required throughout the duration of this Agreement.

In the event the Company comes to believe that has violated or may have violated any trade controls or export regulation governing the sale or other distribution of the Product, it shall be notified to Interquim promptly of its belief.

The Company shall indemnify, defend and hold harmless Interquim and Interquim's directors, officers, employees, successors and assigns from and against any and all claims relating to a violation or possible violation by the Company or any of Company sub-distributors, consultants, agents and other representatives of any applicable trade controls or applicable export regulation.

The Company acknowledges and agrees that any material trade controls, or export regulation violation shall constitute a material breach of this Agreement.

- 15.11 **Data Protection.** The Legal Representatives of either Party acknowledge being informed that all personal data reflected in this Agreement, as well as those generated during the term of the Agreement, shall be processed by either Party as independent controllers in order to manage the contractual relationship and comply with the rights and obligations set out in this Agreement, having the legitimate interest as the legal basis that enables the processing of personal data.

The data shall be retained during the term of the contractual relationship established herein and shall be processed solely by the Parties and by those third parties to whom they are legally or contractually obliged to communicate them. The data shall be subsequently blocked for the time necessary to face possible legal and/or administrative proceedings that could derive from their actions.

The legal representative of either Party may, pursuant to the terms set forth by current law, exercise their rights of access, rectification, erasure, opposition, restriction of processing, portability of data to the registered addresses detailed above or by sending an email to [***] or the email furnished by the Company, as appropriate. The Legal Representatives of each Party are entitled to file claims with the Competent Authority in data protection matters if they consider that their personal data was not processed in accordance with the applicable regulation.

Finally, please be informed that you may also contact Ferrer's data protection officer by emailing [***].

- 15.12 **Insurance.** Each Party shall assume all risks associated with its, any of its Associates' and/or, the case of the Company, any other Company Representative's acts and omissions under or otherwise in connection with this Agreement, including in relation to any breach of its covenants, representations and warranties and/or its negligence or willful misconduct. Each Party will maintain liability insurance covering and professional its respective risks, with reputable and financially secure insurance carriers or a program of self-insurance as are appropriate and in accordance with applicable legal requirements, sound business practice and its respective direct and contingent obligations under this Agreement, in each case with limits of not less than [***] per occurrence and in the aggregate. If requested, a Party shall deliver to the other Party appropriate evidence that such liabilities are adequately covered.
- 15.13 **Signature.** This Agreement may be signed by either Party by electronic means through a Qualified Trust Services Provider, which authenticity can be demonstrated and in accordance with applicable legal requirements. Such electronic signature will have the same effect and validity as the manual signature. And in proof of their agreement, the Parties sign this Agreement, executed by their respective duly authorized legal representatives on the date above written.

*** Signature Page Follows ***

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

PELTOS THERAPEUTICS INC.

By: /s/ Scott M. Plesha
PRINT NAME: Scott Plesha
TITLE: Chief Executive Officer

Ferrer Internacional S.A.

By: /s/ Mario Rovirosa /s/ David Ferrer
PRINT NAME: Mario Rovirosa / David Ferrer
TITLE: Legal Representatives

Interquim, S.A.U.

By: /s/ Mario Rovirosa /s/ David Ferrer
PRINT NAME: Mario Rovirosa / David Ferrer
TITLE: Legal Representatives

ANNEX 1

1. Substance

[***]

2. Supply Price

[***]

3. Minimum Order Quantities

[***]

4. Trademarks

[***]

5. Patents

[***]

ANNEX 2

Specifications

[**]

ANNEX 3

Ferrer Ethical Code for Third Parties

[**]



FOR IMMEDIATE RELEASE

**Pelthos Therapeutics Acquires Xepi® (ozenoxacin) Cream, 1%
and Announces \$18 Million Private Convertible Notes Financing**

- Acquisition adds complementary dermatology product to the Pelthos portfolio anchored by ZELSUVMI™
- Xepi is a novel FDA-approved topical treatment for impetigo that addresses a critical unmet need in antibiotic-resistant skin infections caused by staph and strep infections, most commonly affecting children
- Impetigo affects approximately 3 million people in the U.S. every year and is among the most common bacterial skin infections seen in pediatric offices
- Private convertible notes financing will support the acquisition and re-launch of Xepi, accelerate the commercialization of ZELSUVMI for molluscum contagiosum, and for general working capital purposes

DURHAM, N.C., November 7, 2025 — Pelthos Therapeutics Inc. (NYSE American: PTHS), a biopharmaceutical company committed to commercializing innovative therapeutic products for unmet patient needs (“Pelthos”), today announced it has acquired the U.S. commercialization rights to Xepi® (ozenoxacin) Cream, 1%, from Biofrontera Inc. and Ferrer Internacional S.A. (the “Acquisition”). Xepi is a non-fluorinated quinolone antimicrobial indicated for the topical treatment of impetigo due to *Staphylococcus aureus* or *Streptococcus pyogenes* in adult and pediatric patients two months of age and older.

The Company has also closed on an \$18 million private convertible notes financing (the “Notes”) with existing investors, including Ligand Pharmaceuticals Incorporated (Nasdaq: LGND) and a group of investors led by Murchinson Ltd (the “Investors”).

Xepi Acquisition

Under the terms of the Acquisition agreement, Pelthos will pay Biofrontera \$3.0 million and Ferrer \$1.2 million upfront, with additional payments based on the availability of commercial quantities of Xepi and the achievement of sales-based milestones. Pelthos will pay royalties on U.S. net sales of Xepi to Ferrer and the Investors.

“This acquisition represents an excellent investment opportunity and marks an exciting new chapter in the Pelthos growth story,” said Scott Plesha, CEO of Pelthos. “Xepi is well-positioned to address antimicrobial resistance in pediatric dermatology, and we believe it will provide physicians with an important alternative to first-line impetigo treatments. Offering another novel product to the pediatric and dermatology communities creates an increasingly favorable opportunity for Pelthos as it allows us to leverage our current commercial infrastructure to promote multiple innovative brands.”

Xepi was developed by Ferrer and Medimetriks Pharmaceuticals, Inc., and approved by the FDA in 2017. At the time of approval, Xepi was the first new novel treatment for impetigo in more than 10 years. Biofrontera has owned the U.S. rights to Xepi since 2019 but has not been actively promoting the product. Pelthos intends to re-launch Xepi in late 2026.

Impetigo is a highly contagious bacterial skin infection most often caused by *Staphylococcus aureus* and/or Group A Streptococcus (*Streptococcus pyogenes*). It affects approximately 3 million people in the U.S. every year and is most common in children ages 2 to 5.¹ Impetigo is among the most common bacterial skin infections seen in pediatric offices and spreads easily within families, in crowded settings, such as schools and childcare facilities.

“As bacterial resistance continues to rise, particularly to commonly used topical antibiotics like mupirocin, the need for effective alternatives in treating impetigo has never been greater,” said Lawrence A. Schachner, MD, Chair and Professor Emeritus at the University of Miami Department of Dermatology. **“Xepi** is one of the few treatment options for children that can act against both methicillin-resistant and mupirocin-resistant *Staphylococcus aureus*. We believe it **is a significant therapeutic advancement for clinicians and patients facing infections that no longer respond to traditional therapies.”**

Private Convertible Notes Financing

Pelthos has also closed on an \$18 million convertible notes financing with the Investors. The Notes will be secured obligations of Pelthos and will bear interest at a rate of 8.5% per annum, payable quarterly in arrears. The Notes will mature on November 6, 2027, unless earlier repurchased, redeemed or converted into shares of Pelthos common stock in accordance with their terms. The Notes will be convertible at an initial conversion price of \$34.442, representing the price that is the lower of (i) the Official Closing Price immediately preceding the signing of the binding agreement or (ii) the average Official Closing Price for the five trading days immediately preceding the signing of the binding agreement. The Company anticipates that the proceeds of the financing will be used to acquire and relaunch Xepi, accelerate the commercialization of ZELSUVMI, and for general working capital purposes.

In addition to the Notes, the Investors will be entitled to a low single-digit royalty on U.S. net sales of Xepi and additional milestone payments and royalties on ZELSUVMI net sales in Japan, if ZELSUVMI is approved in Japan.

“The convertible notes transaction demonstrates the ongoing confidence of our existing investors. The additional capital from this transaction allows us to add a complementary product to our portfolio, strengthens our balance sheet, and will help support the commercial growth of ZELSUVMI, our novel medicine for molluscum contagiosum,” said Frank Knuettel II, CFO of Pelthos.

Sullivan & Worcester LLP and Paul Hastings LLP served as legal counsel to Pelthos. Piper Sandler and Lake Street Capital Markets LLC served as financial advisors to Pelthos on the Notes financing, and Roth Capital Partners, LLC advised Pelthos on the Xepi acquisition. Latham & Watkins LLP served as lead counsel to Ligand. Kelley Drye & Warren LLP and Morgan, Lewis and Bockius LLP represented the group of investors led by Murchinson Ltd.

The offer and sale of the Notes and the shares of common stock issuable upon conversion of the Notes, if any, have not been, registered under the Securities Act or the securities laws of any other jurisdiction, and until so registered, may not be offered or sold in the United States or to, or for the account or benefit of, U.S. persons, absent registration or an applicable exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and other applicable securities laws.

This press release is neither an offer to sell nor a solicitation of an offer to buy any securities, nor shall it constitute an offer to sell, solicitation of an offer to buy or sale of any securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or jurisdiction.

About Pelthos Therapeutics

Pelthos Therapeutics is a biopharmaceutical company committed to commercializing innovative, safe, and efficacious therapeutic products to help patients with unmet treatment burdens. The company's lead product ZELSUVMI™ (berdazimer) topical gel, 10.3%, for the treatment of molluscum contagiosum, was approved by the U.S. Food and Drug Administration in 2024. More information is available at www.pelthos.com. Follow Pelthos on LinkedIn and X.

Forward-Looking Statements

This press release contains forward-looking statements, as defined in Section 21E of the Securities Exchange Act of 1934, regarding Pelthos' current expectations. All statements, other than statements of historical fact, could be deemed to be forward-looking statements. In some instances, words such as "plans," "believes," "expects," "anticipates," and "will," and similar expressions, are intended to identify forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect our good faith beliefs (or those of the indicated third parties) and speak only as of the date hereof. These forward-looking statements include, without limitation, references to our expectations regarding (i) our belief that Xepi is well-positioned to address antimicrobial resistance in pediatric dermatology and will provide physicians with an important alternative to first-line impetigo treatments, (ii) our belief that offering Xepi to the pediatric and dermatology communities is favorable to us because it allows us to leverage our current commercial infrastructure to promote multiple innovative brands, (iii) our belief that Xepi is a significant therapeutic advancement for clinicians and patients facing infections that no longer respond to traditional therapies, (iv) the Company's anticipated use of proceeds from the Convertible Notes financing, (v) our belief that the additional capital from the Convertible Notes transaction will allow us to add a complementary product to our portfolio, strengthens our balance sheet, and will help support the commercial growth of ZELSUVMI, and (vii) the Company's future opportunities, strategy and plans in the market. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict. Factors that could cause actual results to differ materially from those set forth in such forward-looking statements include, but are not limited to, risks and uncertainties related to there being no guarantee that the trading price of the combined company's Common Stock will be indicative of the combined company's value or that the combined company's Common Stock will become an attractive investment in the future; we may rely on collaborative partners for milestone payments, royalties, materials revenue, contract payments and other revenue projections and may not receive expected revenue; we and our partners may not be able to timely or successfully advance any product(s) in our internal or partnered pipeline or receive regulatory approval and there may not be a market for the product(s) even if successfully developed and approved; and changes in general economic conditions, including as a result of war, conflict, epidemic diseases, the implementation of tariffs, and ongoing or future litigation could expose us to significant liabilities and have a material adverse effect on us. These and other risks and uncertainties are described more fully in our filings with the U.S. Securities and Exchange Commission. The information in this press release is provided only as of the date of this press release, and we undertake no obligation to update any forward-looking statements contained in this press release based on new information, future events, or otherwise, except as required by law.

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¹ Holly Hartman-Adams, Christine Banvard, Gregory Juckett. *Am Fam Physician*. 2014;90(4):229-235

² https://health.hawaii.gov/docd/disease_listing/impetigo/
